

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001

under the

Protection of the Environment Operations Act 1997

Explanatory note

The object of this Regulation is to provide for the management of discharges of saline water in the Hunter River catchment by the establishment of a tradeable emission scheme. The scheme is based on a pilot scheme that has been conducted by the EPA and the Department of Land and Water Conservation since 1995.

The object of the scheme is to minimise the impact of saline discharges on irrigation, other water uses and on aquatic ecosystems in the Hunter River catchment:

- (a) at the lowest overall cost to the community, and
- (b) in a way that provides ongoing financial incentives to reduce pollution.

A person who holds an environment protection licence that authorises the discharge of saline water into the Hunter River catchment will be permitted to discharge saline water only in accordance with the scheme. Discharges are permitted under the scheme only during periods in which the Hunter River is classified as being in flood flow or high flow. During flood flow periods, the licence holder may discharge unlimited amounts of saline water, subject to any overriding limit that may be applied by the EPA as a condition of the licence held by the discharger. During high flow periods, the licence holder will be entitled to discharge saline water only if the licence holder holds one or more credits in the scheme.

The EPA will create 1,000 credits in the scheme. Initially, the credits will be allocated only to participants in the pilot scheme and new licence holders. Over a 10-year transition period, 20% of those “first issue” credits will expire every 2 years. On expiry, those credits will be replaced with credits with a 10-year lifespan. The replacement credits will be sold by the EPA at auction. Members of the public,

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as well as pilot scheme participants, will then be able to purchase credits at those auctions.

Credits will be tradeable in accordance with the Regulation.

A credit entitles a person who holds a licence that authorises discharges of saline water into the Hunter River catchment to discharge 0.1% of the total allowable discharge for the Hunter River catchment. The total allowable discharge for the Hunter River catchment is determined on a day-to-day basis, by reference to the salinity targets for the Hunter River catchment. The targets are set out in the Regulation. The more credits the licence holder holds, the more saline water the licence holder is entitled to discharge. However, the timing of any discharge is subject to very specific rules that are set out in the Regulation.

A credit does not confer any authority on a person to discharge saline water unless the person also holds an environment protection licence that authorises the holder to discharge saline water into the Hunter River catchment.

The Regulation provides for the operation, administration and workings of the tradeable emission scheme. It also requires participants in the scheme to contribute to the funding of the scheme and authorises the EPA to exercise certain enforcement powers in respect of the scheme.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 222, 295, 295C, 295F, 295H, 295J and 323 (the general regulation-making power).

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Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001*.

2 Commencement

This Regulation commences on .

3 Objects

- (1) The object of this Regulation is to provide for the management of discharges of saline water into the Hunter River catchment by establishing a tradeable emission scheme, to be known as the Hunter River Salinity Trading Scheme.
- (2) The object of the scheme is to minimise the impact of discharges of saline water on irrigation, other water uses and on aquatic ecosystems in the Hunter River:
 - (a) at the lowest overall cost to the community, and
 - (b) in a way that provides ongoing financial incentives to reduce pollution.

Note.

Overview of scheme

Under the scheme provided for by this Regulation, discharges of saline water into the Hunter River catchment are permitted only during periods when the Hunter River is considered to be in high flow or flood flow, and only by persons who hold licences that authorise such discharges (discharge licences).

During flood flow periods, the amount of saline water that may be discharged by a discharge licence holder is unlimited, subject to any overriding limit that may be applied by the EPA as a condition of the licence.

During high flow periods, a discharge licence holder will be entitled to discharge saline water only if the licence holder holds one or more credits in the scheme.

Credits in the scheme are created by the EPA. Initially credits will be allocated to participants in the pilot scheme, which has been conducted by the EPA, in

conjunction with the Department of Land and Water Conservation, since 1995. Provision is also made for the allocation of credits to new entrants to the scheme. A credit will have a limited lifespan of no more than 10 years. The EPA will be able to create and sell new credits as existing credits expire. Provisions relating to the creation, allocation and sale of credits are set out in Part 2.

A credit entitles a person who holds a discharge licence to discharge 0.1% of the total allowable discharge of salt for the Hunter River catchment. The total allowable discharge is determined on a day-to-day basis, by reference to the salinity targets for the Hunter River catchment. The more credits the licence holder holds, the more saline water the licence holder is entitled to discharge. However, the timing of any discharge is subject to very specific rules. Provisions relating to calculation of discharges are set out in Parts 3 and 4.

A credit is tradeable in accordance with this Regulation. Initially credits will be tradeable only between persons who are allocated those credits by the EPA. However, after the first auction of credits is held, any person will be able to buy, hold and trade in credits. A credit does not confer any authority on the holder to discharge saline water unless the person also holds a licence that authorises such discharges. Provisions relating to trading of credits are set out in Part 5.

The remaining parts of this Regulation set out other provisions relating to the scheme, including administration, cost recovery and enforcement provisions.

4 Definitions

Expressions used in this Regulation have the meanings set out in the Dictionary at the end of this Regulation.

5 Participants in scheme

- (1) For the purposes of this Regulation, *participant* in the scheme has the meaning given by section 295A of the Act.
- (2) For the purposes of paragraph (b) of the definition of *participant* in that section, the scheme applies to discharge licences.

6 Discharge licence

For the purposes of this Regulation, a *discharge licence* means a licence that authorises the discharge of saline water into the Hunter River catchment from an authorised discharge point or points.

Note. *Licence* means an environment protection licence.

7 Hunter River catchment

For the purposes of this Regulation, the *Hunter River catchment* means the catchment of the Hunter River and its tributaries upstream of Singleton, excluding:

- (a) the Goulburn River upstream of Kerrabee, and
- (b) any tributary that drains into Lake St Clair, and

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- (c) any tributary that drains into Lake Glenbawn.

8 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Credits in scheme

Division 1 General

9 Creation of credits

- (1) Credits in the scheme are to be created by the EPA.
- (2) Credits are to be in a form approved by the EPA.

10 Authority conferred by credit

- (1) A credit, when held by the holder of a discharge licence, confers authority on the holder to discharge 0.1% of the total allowable discharge for a high flow block, subject to the discharge rules, during the period in which the credit remains in force.

Note. The concepts of **total allowable discharge** and **blocks** are explained in Part 3.

- (2) A credit does not confer any authority on a person to discharge saline water unless the person also holds a discharge licence.

11 Lifespan of credit

A credit remains in force for the number of sequential blocks specified in relation to the credit in the Credit Register (the ***lifespan*** of the credit), except during any period in which it is suspended under this Regulation.

Note. **Blocks** represent periods of 24 hours. The concept is explained further in Part 3. Credits will generally have a lifespan of 10 years. The first credits created by the EPA will have various lifespans, ranging from 2 to 10 years.

12 Who may hold credit

- (1) Any person may hold a credit, subject to subclause (2).
- (2) A first issue credit may be held only by a person who holds a discharge licence or a non-discharge licence, or by the EPA.

Note. **First issue credits** are the first 1,000 credits created in the scheme by the EPA. Those credits are allocated only to holders of discharge licences and other licence holders who participated in the pilot scheme.

Division 2 Initial allocation of credits

13 First issue credits

- (1) On the commencement of this Regulation, the EPA is to create 1,000 credits in the scheme (*first issue credits*).
- (2) Of those first issue credits:
 - (a) 200 are to have a 2-year lifespan, and
 - (b) 200 are to have a 4-year lifespan, and
 - (c) 200 are to have a 6-year lifespan, and
 - (d) 200 are to have an 8-year lifespan, and
 - (e) 200 are to have a 10-year lifespan.

14 Allocation of first issue credits to pilot scheme participants

- (1) On the commencement of this Regulation, the first issue credits are to be issued to the pilot scheme participants referred to in Schedule 1, in accordance with that Schedule.
- (2) Each pilot scheme participant who is allocated first issue credits is to be allocated an equal number of first issue credits of each possible lifespan. For example, if a pilot scheme participant is eligible for 15 first issue credits, the participant should be allocated 3 credits with a 2-year lifespan, 3 credits with a 4-year lifespan, 3 credits with a 6-year lifespan, 3 credits with an 8-year lifespan and 3 credits with a 10-year lifespan.
- (3) The first issue credits are to be allocated free of charge. This subclause does not affect any liability for a contribution in respect of the credit under Part 7.

Division 3 Allocation of residual first issue credits

15 Residual first issue credits

- (1) Any first issue credits that are allocated to the EPA under Schedule 1 (the *residual first issue credits*) may be retained by the EPA.
- (2) The EPA may allocate all or any of the residual first issue credits to any other person as provided for by this Division.

- (3) Any residual first issue credits that are allocated to another person are to be allocated in multiples of 5.

16 Allocation of residual first issue credits for new or expanded activities

- (1) The EPA may allocate any of the residual first issue credits to any person who, after the commencement of this Regulation, carries out or proposes to carry out any new or expanded activity that:
 - (a) results or is likely to result in discharges of saline water in the Hunter River catchment, and
 - (b) cannot be carried out unless authorised by a discharge licence or a variation of a discharge licence.
- (2) An activity is a ***new activity*** for the purposes of this clause if the EPA is satisfied that it was not being carried out, or was not being regulated by a discharge licence, at the commencement of this Regulation.
- (3) An activity is an ***expanded activity*** for the purposes of this clause if the activity is not a new activity but the EPA is satisfied that the scale of the activity, or the nature of the activity, has been, or is proposed to be, changed so as to require a variation of the discharge licence, being a variation that will authorise a significant increase in the environmental impact of the activity authorised by the licence.

Note. If the EPA proposes to vary a licence in such a manner and the proposed variation has not been the subject of an environmental assessment and public consultation under the *Environmental Planning and Assessment Act 1979*, the EPA is required to invite and consider public submissions before it varies the licence under section 58 (6) of the Act.

- (4) The EPA may allocate residual first issue credits to a person only if the person holds a discharge licence.
- (5) Subclause (4) does not prevent the EPA from agreeing to allocate first issue credits to a person who has duly applied for a discharge licence, but the credits are not to be allocated until the licence is issued.

17 Application for allocation

- (1) An application for an allocation of residual first issue credits is to be made to the EPA in a form and manner approved by the EPA.
- (2) An application for an allocation of residual first issue credits cannot be made after the closing date for allocations.

- (3) The closing date for allocations is the date that is 2 months before the date determined by the EPA as the date for the first auction of credits (not being first issue credits) under this Regulation.

18 Number of credits to be allocated

In determining the number of residual first issue credits to be allocated to a person, the EPA may have regard to the following:

- (a) the criteria used to allocate pilot scheme credits to pilot scheme participants and the need to maintain equity between pilot scheme participants and new entrants to the scheme,
- (b) the type of activity for which the credits are sought and any relevant difference between that activity and the types of activities for which pilot scheme credits were allocated,
- (c) whether any first issue credits have already been allocated to the person and, if so, how many,
- (d) in the case of expanded activities, the scale of the activities relative to the scale of the activities before the expansion and the impact of the expansion on the need to discharge saline water,
- (e) the number of residual first issue credits held by the EPA and the need to maintain an appropriate reserve of first issue credits,
- (f) any future applications for the allocation of first issue credits that are anticipated by the EPA,
- (g) the period remaining before the first auction of credits,
- (h) the fact that credits must be allocated in multiples of 5.

Division 4 Creation and sale of new credits

19 New credits to be created every 2 years

- (1) The EPA is to create 200 credits in the scheme every 2 years, for the purpose of replacing the 200 credits that expire every 2 years.
- (2) The credits (referred to in this Division as *new credits*) are to have a lifespan of 10 years.
- (3) The lifespan of the new credits must not start before the end of the lifespan of the credits that they replace.

- (4) However, a new credit may be sold by the EPA before its lifespan starts.

Note. The 1,000 first issue credits have a lifespan of 2, 4, 6, 8, or 10 years, so 200 of them will expire every 2 years.

20 Sale of new credits by auction

- (1) The EPA is to make arrangements for the sale of new credits by auction.
- (2) An auction is to be conducted in a manner determined by the EPA and is subject to such conditions as the EPA determines.
- (3) Without limiting subclause (2), the conditions may include a limit on the number of credits that may be purchased by any one person.
- (4) The EPA may charge a fee to any person who buys a credit at auction in order to recover the costs incurred by or on behalf of the EPA in connection with the auction.

21 Sale of new credits by private treaty

The EPA may sell any new credit that is not sold at auction by private treaty or otherwise.

22 Sale of residual first issue credits

Any first issue credits that are not allocated by the EPA as provided for by Divisions 2 and 3 may be sold in the same way as new credits.

Part 3 Workings of scheme

Division 1 Preliminary

23 Object of Part

- (1) The object of this Part is to ensure that discharges of saline water by the holders of discharge licences do not at any stage result in salinity levels in the Hunter River catchment exceeding the following levels (referred to as the *salinity targets*):
 - (a) 600 EC in the upper sector (determined at the upper sector reference point),
 - (b) 900 EC in the middle sector (determined at the middle sector reference point),
 - (c) 900 EC in the lower sector (determined at the lower sector reference point).
- (2) The Services Co-ordinator is to have regard to the object of this Part in exercising its functions under this Part.
- (3) In this clause:
EC means electrical conductivity, measured in microSiemens per centimetre.

Division 2 Classification of river flow

24 Division of Hunter River flow into blocks

- (1) For the purposes of the scheme, the flow of the Hunter River is taken to be divided into notional blocks.
- (2) A block is a body of water that flows down the Hunter River and that is predicted to pass through the lower sector reference point in a 24-hour period (starting at midnight on one day and ending immediately before midnight on the following day).
Note. *Lower sector reference point* is defined in the dictionary.
- (3) Blocks are to be identified on the River Register by the Services Co-ordinator by means of a unique identification number.

Note. There will be the same number of blocks as there are days in a year. Each block represents an opportunity for a discharge licence holder to discharge saline water, depending on its classification. This is explained further below.

25 Classification of river blocks

- (1) The Services Co-ordinator is to classify the rate of flow of each block of the Hunter River.
- (2) A block is to be classified, in relation to each sector that it passes through, as:
 - (a) low flow, or
 - (b) high flow, or
 - (c) flood flow.
- (3) The following reference points are to be used for the purpose of predicting the rate of flow of a block as it passes through each sector:
 - (a) for the upper sector—the upper sector reference point,
 - (b) for the middle sector—the middle sector reference point,
 - (c) for the lower sector—the lower sector reference point.
- (4) The classification of a block may differ from sector to sector.
- (5) The classification of a block is to be entered in the River Register.
- (6) If a block is not classified, or its classification is not entered in the River Register, in relation to any or all sectors, it is taken to be a low flow block in the sector concerned.

26 Flow ranges

- (1) For the purposes of this Part, the low flow range, high flow range and flood flow range for each sector is as specified next to the sector concerned in the Table to this clause.
- (2) In the Table, **ML** means megalitres.

Table

Classification of river blocks

Sector	Low flow range	High flow range	Flood flow range
Upper	Less than 600 ML per day	600 ML per day–20,000 ML per day (inclusive)	Exceeds 20,000 ML per day
Middle	Less than 1,800 ML per day	1,800 ML per day–10,000 ML per day (inclusive)	Exceeds 10,000 ML per day
Lower	Less than 2,000 ML per day	2,000 ML per day–10,000 ML per day (inclusive)	Exceeds 10,000 ML per day

27 Classification of block—upper sector

- (1) **Low flow.** A block is to be classified low flow in relation to the upper sector if it is predicted that:
 - (a) the rate of flow of the block in the upper sector will be in the low flow range for the upper sector, or
 - (b) the rate of flow of the block in either the middle sector or the lower sector (or both) will be in the low flow range for those sectors.
- (2) **High flow.** A block is to be classified high flow in relation to the upper sector if it is predicted that:
 - (a) the rate of flow of the block in the upper sector will be in the high flow range for the upper sector and the rate of flow of the block in the middle sector and lower sectors will be in the high flow or flood flow range for those sectors, but will not be in the low flow range in either of those sectors, or

- (b) the rate of flow of the block in the upper sector will be in the flood flow range for the upper sector, and the rate of flow of the block in either the middle sector or the lower sector (or both) will be in the high flow range for those sectors, but will not be in the low flow range for either of those sectors.
- (3) **Flood flow.** A block is to be classified flood flow in relation to the upper sector if it is predicted that:
 - (a) the rate of flow of the block in the upper sector will be in the flood flow range for the sector, and
 - (b) the rate of flow of the block in both the middle sector and the lower sector will be in the flood flow range for those sectors.

28 Classification of block—middle sector

- (1) **Low flow.** A block is to be classified low flow in relation to the middle sector if it is predicted that:
 - (a) the rate of flow of the block in the middle sector will be in the low flow range for the middle sector, or
 - (b) the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.
- (2) **High flow.** A block is to be classified high flow in relation to the middle sector if it is predicted that:
 - (a) the rate of flow of the block in the middle sector will be in the high flow range for the middle sector and the rate of flow of the block in the lower sector will be in the high flow or flood flow range for the lower sector, or
 - (b) the rate of flow of the block in the middle sector will be in the flood flow range for the middle sector, and the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.
- (3) **Flood flow.** A block is to be classified flood flow in relation to the middle sector if it is predicted that:
 - (a) the rate of flow of the block in the middle sector will be in the flood flow range for the sector, and
 - (b) the rate of flow of the block in the lower sector will be in the flood flow range for the lower sector.

29 Classification of block—lower sector

- (1) **Low flow.** A block is to be classified low flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.
- (2) **High flow.** A block is to be classified high flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.
- (3) **Flood flow.** A block is to be classified flood flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the flood flow range for the sector.

30 Site discharge period

- (1) The Services Co-ordinator is to determine a site discharge period for each authorised discharge point, in relation to each high flow or flood flow block.

Note. Licence holders may discharge saline water only during a site discharge period (see the discharge rules in Part 4.) There are no site discharge periods for low flow blocks as discharges into low flow blocks are not permitted under the discharge rules.

- (2) The site discharge period for an authorised discharge point is the period in which discharges of saline water are permitted from that authorised discharge point, subject to the discharge rules.
- (3) In determining the site discharge period, the Services Co-ordinator is to ensure that any discharge of saline water that is made from an authorised discharge point in a sector is made into a block that is a high flow block or a flood flow block in that sector.
- (4) The start and finish times for the site discharge period are to be determined by the Services Co-ordinator based on an estimate of the time it will take a discharge from an authorised discharge point to reach and mix with a block as it passes through the sector in which the authorised discharge point is located.
- (5) In determining the site discharge period, the Services Co-ordinator may make such adjustments as the Services Co-ordinator thinks fit to optimise water quality. For example, the Services Co-ordinator may adjust the start and finish times so as to ensure discharges mix with the higher flows of the block.

- (6) The start and finish times for each site discharge period, in relation to a particular high flow or flood flow block, are to be entered in the River Register.

Division 3 Total allowable discharge

31 Total allowable discharge of salt

- (1) The Services Co-ordinator is to determine a total allowable discharge of salt in relation to each block that is a high flow block.

Note. The total allowable discharge is used to calculate how much saline water may be discharged into a high flow block by the holders of discharge licences.

- (2) The total allowable discharge of salt is to be determined by calculating the maximum amount of salt that may be discharged in the sector or sectors in which the block is a high flow block so that, taking into account the river flow and background salinity levels, the salinity target for the high flow sector that is the farthest downstream is not exceeded.

- (3) The following are examples of the operation of subclause (2):

- (a) **Example 1.** Block is high flow in all sectors.

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in all sectors so that the salinity target for the lower sector (900 EC) is not exceeded.

- (b) **Example 2.** Block is high flow in the upper and middle sectors, and flood flow in the lower sector.

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in the upper and middle sectors so that the salinity target for the middle sector (900 EC) is not exceeded.

- (c) **Example 3.** Block is high flow in the upper sector, and flood flow in the middle and lower sectors.

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in the upper sector so that the salinity target for the upper sector (600 EC) is not exceeded.

- (4) The total allowable discharge is to be expressed in tonnes (or fractions of tonnes).

- (5) The total allowable discharge of salt for each block that is a high flow block is to be entered in the River Register.

Division 4 Discounting of credits

32 Sector credit discount factor

- (1) The Services Co-ordinator may, for the purpose of ensuring that the full exercise of credit entitlements does not result in the salinity target for any sector being exceeded, determine a sector credit discount factor that is to be applied in relation to a high flow block while it is in a particular sector.
- (2) The sector credit discount factor is to be one or a fraction of one.
- (3) The sector credit discount factor is to be entered in the River Register.

Note. Under the discharge rules, the sector credit discount factor is used to determine the number of credits that a licence holder may use in relation to a high flow block. If the sector credit discount factor is one, the effect is that there is no discount. That is, credit holders can use their full credit entitlements, subject to any tributary protection limit.

Division 5 River Register

33 River Register

- (1) The Services Co-ordinator is to establish and maintain a River Register.
- (2) The Services Co-ordinator is to enter in the River Register:
 - (a) such matters as are required to be included in it by this Regulation or by the EPA, and
 - (b) any additional matters that the Services Co-ordinator considers appropriate.
- (3) The River Register may be kept wholly or partly by means of a computer (including by means of an on-line service).
- (4) The River Register is to be made available for inspection by the public (including participants in the scheme) at an office of the Services Co-ordinator or another person or body appointed to provide the River Register.

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Note. The Services Co-ordinator may enter into a contract with any person for the provision of the River Register. This is dealt with under Part 6 (Administration of scheme).

34 Entry of information in River Register

The Services Co-ordinator is not required to classify a block, or to make any other determination under this Regulation that is required to be entered in the River Register, until it is satisfied that it has enough information to do so with a reasonable degree of accuracy.

Part 4 Discharge rules

Division 1 Preliminary

35 Definitions

In this Part:

relevant sector, in relation to the holder of a discharge licence, means the sector into which any saline water discharged from the licence holder's authorised discharge point first flows.

sector credit discount factor means the sector credit discount factor for a block when it is in an identified sector, determined under Part 3 and entered in the River Register.

Division 2 Licence conditions

Note. Under the Act, the maximum penalty for a contravention of a licence condition is \$250,000 (in the case of a corporation) or \$120,000 (in the case of an individual). Further penalties apply to continuing offences.

36 No discharges except from authorised discharge point

It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged into the Hunter River catchment except from the licence holder's authorised discharge point or points.

37 No discharges except during site discharge period

It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged from an authorised discharge point otherwise than during a site discharge period for that authorised discharge point.

Note. There are no site discharge periods for low flow blocks. The object of this clause is to ensure that discharges of saline water are made into high flow and flood flow blocks, and not into low flow blocks.

38 Maximum discharge during site discharge period

- (1) The maximum volume of saline water that may be discharged by the holder of a discharge licence into the Hunter River catchment during a site discharge period for the holder's authorised discharge point is:
 - (a) the licence holder's volume discharge limit for the block to which the site discharge period relates, determined in accordance with Division 3 of this Part, or
 - (b) the licence holder's tributary protection limit (if any),whichever is the lower.

Note. The tributary protection limit (if any) for saline water discharges is specified in the discharge licence.
- (2) If a discharge licence has more than one authorised discharge point, the total volume of all discharges of saline water from those points during the authorised discharge period for those points must not exceed the maximum volume of saline water that may be discharged by the holder of the licence under subclause (1).
- (3) It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged in contravention of this clause.

39 Record keeping requirements

- (1) If a holder of a discharge licence causes or permits saline water to be discharged into the Hunter River catchment, the licence holder must:
 - (a) keep a record of the number of credits held by the licence holder, as at the date and time the discharge was started, and
 - (b) keep a record of the total allowable discharge for the block in respect of which the discharge is made, as entered on the River Register at the date and time the discharge was started, and
 - (c) keep those records for at least 4 years after the discharge is completed.
- (2) The record must be in a form and manner approved by the EPA.
- (3) It is a condition of a discharge licence that the licence holder does not contravene this clause.
- (4) This clause does not apply to a discharge of saline water that is made in respect of a block that is a flood flow block.

Division 3 Calculating volume discharge limits

40 High flow block—determination of volume discharge limit

- (1) A licence holder's volume discharge limit, in relation to a block that is a high flow block in the licence holder's relevant sector, is to be determined in accordance with the following steps:

Step 1: Determine the number of credits the licence holder can use for the high flow block

The number of credits that a licence holder may use for a high flow block is to be determined as follows:

$$E = Cr \times D$$

Where:

E is the number of available credits that a licence holder may use for a high flow block,

Cr is the number of credits held by the licence holder in respect of the block at the time at which the discharge takes place, being credits that are in force, and excluding any credits forfeited under this Regulation or that are excluded under Part 5,

Note. Under Part 5, a credit that is transferred in contravention of the Regulation cannot be counted toward the holder's volume discharge limit.

D is the sector credit discount factor for the block in the licence holder's relevant sector at the start of the discharge.

Step 2: Determine the licence holder's individual salt discharge limit

The licence holder's salt discharge limit is to be determined as follows:

$$L = \frac{T \times E}{1,000}$$

Where:

L is the licence holder's salt discharge limit (in tonnes),

T is the total allowable discharge for the block (in tonnes) at the start of the discharge,

E is the number of available credits that a licence holder may use for a high flow block, being the amount determined in step 1 rounded down to the nearest whole number.

Step 3: Calculate the salt concentration of the water to be discharged

The salt concentration of the water to be discharged is to be calculated as follows:

$$C = \frac{EC \times F}{1,000}$$

Where:

C is the salt concentration in the saline water to be discharged by the licence holder, measured in tonnes per megalitre,

EC is the mean electrical conductivity of the water discharged by the licence holder, measured in microSiemens per centimetre, calculated in accordance with subclause (2),

F is the conversion factor set out in the discharge licence.

Step 4: Determine the volume discharge limit

The volume discharge limit of the licence holder is to be determined as follows:

$$V = \frac{L}{C}$$

Where:

V is the licence holder's volume discharge limit for a block (in megalitres),

L is the licence holder's salt discharge limit for the block (calculated in step 2),

C is the salt concentration in the saline water to be discharged (calculated in step 3).

- (2) The mean electrical conductivity of the water discharged is to be estimated before the discharge takes place, and monitored throughout the period of the discharge, in accordance with the conditions of the discharge licence. If the mean electrical conductivity of the water discharged differs from any estimate made before the discharge is completed, the volume discharge limit must be re-calculated using the actual figures (and the amount of saline water discharged must be reduced if necessary).

41 Flood flow block

- (1) There is no volume discharge limit in relation to a block that is a flood flow block in the licence holder's relevant sector.

Note. A block will not be classified flood flow in the upper or middle sector unless it is also predicted to be in the flood flow range in all downstream sectors.

- (2) Accordingly, during a site discharge period for a block that is a flood flow block in the licence holder's relevant sector, the maximum volume of saline water that the licence holder may cause or permit to be discharged is the licence holder's tributary protection limit (if any).

Division 4 Emergency dilution arrangements

42 Defence—emergency dilution arrangements

- (1) If at any time the EPA is satisfied that:
 - (a) a contravention by a licence holder of clause 37 or 38 is imminent, and
 - (b) the licence holder has taken all reasonable steps to avoid the contravention,the EPA may approve the licence holder discharging saline water in accordance with an emergency dilution arrangement.
- (2) An emergency dilution arrangement is an arrangement under which a licence holder purchases water from the Water Administration Ministerial Corporation (being water that is additional to any other water that is generally purchased from the Corporation), and uses that water for the sole purpose of diluting the discharge of saline water that is the subject of the arrangement.
- (3) An approval given by the EPA under this clause:
 - (a) is to be in writing, and
 - (b) is subject to such conditions as may be specified by the EPA in the approval.
- (4) It is a defence to a prosecution for an offence arising from an alleged contravention of clause 37 or 38 that the licence holder discharged the saline water concerned in accordance with such an approval.
- (5) An approval under this clause must not authorise a licence holder to exceed the licence holder's tributary protection limit.

Part 5 Trading in credits

Division 1 Trading in credits

43 Trading in credits

- (1) Credits are tradeable only as provided by this Part.
- (2) A credit may be transferred in accordance with this Part.
- (3) A credit cannot be assigned or mortgaged, charged, leased or otherwise encumbered.

44 Trading facility to be established

- (1) The EPA is to make arrangements for the provision of a service to facilitate the trading of credits (a *credit trading facility*).
- (2) The credit trading facility is to be an on-line service provided by the Registrar.
- (3) The credit trading facility may be used only by registered credit traders.
- (4) The EPA may approve the trading of credits by alternative means to the credit trading facility if the on-line service is not available, or in any other circumstances in which the EPA considers it appropriate.
- (5) A transfer of a credit does not have effect unless:
 - (a) it is effected by means of the credit trading facility, or in accordance with the approval of the EPA, and
 - (b) the parties to the transfer are registered credit traders.

45 Registration of credit traders

- (1) The Registrar may register persons as credit traders.
- (2) An application for registration as a credit trader is to be made to the Registrar in a form approved by the Registrar.
- (3) The Registrar may require the applicant, in or in connection with the application, to supply to the Registrar such information as the Registrar may reasonably require in connection with the trading of credits by the applicant or the use of the credit trading facility.

- (4) Until the first auction of credits (not being first issue credits) is held, only the following persons may be registered as credit traders:
 - (a) persons who hold a discharge licence or a non-discharge licence,
 - (b) the EPA.

Note. Until the first auction of credits, only discharge and non-discharge licence holders and the EPA may hold credits in the scheme (see clause 12).

46 Use of credit trading facility

- (1) Use of the credit trading facility is subject to such conditions as may be imposed by the Registrar from time to time.
- (2) If access to the credit trading facility is conditional on the use of a password, and a person accesses the credit trading facility by means of a password associated with a registered credit trader, the Registrar is entitled to assume that the person is the registered credit trader or is acting with the authority of the registered credit trader.

Division 2 Trading rules

47 General rules as to transfers

- (1) A person who holds a credit may transfer that credit:
 - (a) as it relates to a particular block, or
 - (b) as it relates to a particular series of blocks, being blocks that occur in a sequential order, or
 - (c) as it relates to all remaining blocks in the lifespan of the credit.
- (2) A credit, other than a first issue credit, may be transferred to any person.
- (3) A first issue credit may be transferred only to the holder of a discharge licence or a non-discharge licence.
- (4) After a transfer of a credit takes effect:
 - (a) the transferee becomes the holder of the credit, in respect of the block or blocks concerned, and
 - (b) the transferor ceases to be the holder of the credit, in respect of the block or blocks concerned.
- (5) A transfer may be made for consideration or otherwise.

48 Retrospective transfers not permitted

- (1) A person must not transfer a credit retrospectively.
- (2) A transfer of a credit, in respect of a block, is retrospective if, when the transfer takes effect, the site discharge period for that block in relation to the transferee's authorised discharge point has already ended.

49 Credits valid for single use only

- (1) A single credit may be utilised only:
 - (a) once in relation to a block, and
 - (b) by one discharge licence holder in relation to a block.
- (2) A person must not:
 - (a) transfer part of a credit in respect of a block to any other person, or
 - (b) transfer a credit in respect of a block to any other person after having purported to include that credit in the calculation of the volume discharge limit of the transferor under Part 4.

Note. It is permissible for a credit holder who does not want to make a discharge into a particular river block to transfer the authority conferred by the credit in respect of that block to a licence holder who does wish to discharge into that block. This clause prevents a licence holder from "splitting" one credit with another licence holder by agreeing to share the authority conferred by the credit between the two of them or from using the credit and then transferring it to a discharge licence holder further downstream.

50 Effect of sector credit discount factor on transfers

- (1) If a sector credit discount factor of less than one in relation to a particular block and sector is entered in the River Register, a person must not transfer any credit in respect of that block to a licence holder whose authorised discharge point is in that sector, unless the transferor's authorised discharge point is in the same sector.
- (2) In this clause:

sector credit discount factor means the sector credit discount factor determined by the Services Co-ordinator under Part 3.

Note. The purpose of applying a sector credit discount factor of less than one is to ensure that the salinity target in a particular sector is not exceeded. As a result of this clause and clause 49, a licence holder cannot transfer any part of a credit that the person is disqualified from using as a result of the application of a sector credit discount factor. The licence holder can transfer the whole credit, but only to a licence holder whose authorised discharge point is in a sector to which a sector credit discount factor of less than one does not apply. In addition, once a sector

credit discount factor of less than one has been entered in the River Register, licence holders whose authorised discharge points are in the sector to which the sector credit discount factor applies are not permitted to acquire more credits to authorise a particular discharge.

51 Effect of contravention of trading rules on volume discharge limit

- (1) If a credit is transferred, in respect of a block, to a discharge licence holder in contravention of this Division, the credit is to be excluded from the calculation of the volume discharge limit of the discharge licence holder in respect of that block under Part 4.
- (2) Subclause (1) applies even if the transfer of the credit is entered in the Credit Register.

Note. A contravention of the provisions of this Regulation may also result in an enforcement or forfeiture order being made against a person under Part 8.

Division 3 Registrar and Credit Register

52 Registrar

- (1) There is to be a Registrar for the scheme.
- (2) The Registrar is to be the EPA or a person or body appointed as Registrar by the EPA.
- (3) The Registrar has the functions conferred or imposed on the Registrar by this Regulation.

53 Credit Register

- (1) The Registrar is to establish and maintain a Credit Register.
- (2) The following information is to be entered in the Credit Register in relation to each credit that is created in the scheme:
 - (a) the name of the person who holds each credit with respect to each block,
 - (b) the lifespan of the credit,
 - (c) such other particulars as the Registrar considers appropriate.
- (3) The Credit Register:
 - (a) is to be in a form determined by the EPA, and
 - (b) may be established and maintained wholly or partly by means of a computer (including by means of an on-line service), and

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- (c) is to be made available for inspection by members of the public at an office of the Registrar.

54 Transfers to be entered in Register

- (1) A transfer of a credit takes effect when it is entered in the Register, in accordance with such arrangements for the entry of transactions as may be approved by the EPA from time to time.
- (2) The following information, in relation to a credit transfer, is to be entered in the Credit Register (in accordance with those arrangements):
 - (a) the names of the transferor and the transferee,
 - (b) the date and time at which the transfer occurred,
 - (c) the number of credits transferred and the blocks to which the transfer applies.

55 Correction of Credit Register

The Registrar may correct any error or mistake in the Credit Register.

Part 6 Administration of scheme

Division 1 Services Co-ordinator

56 Services Co-ordinator

- (1) There is to be a Services Co-ordinator for the scheme.
- (2) The Services Co-ordinator is to be the EPA or a person or body appointed by the EPA as Services Co-ordinator.
- (3) The Services Co-ordinator has the following functions:
 - (a) to monitor and gauge the flow of the Hunter River, for the purpose of carrying out its functions under this Regulation,
 - (b) to establish and maintain the River Register,
 - (c) to make the contents of the River Register available to the public,
 - (d) such other functions as are conferred or imposed on it by this Regulation or, if the Services Co-ordinator is appointed by the EPA, by the EPA.

57 Engagement of contractors to carry out functions

- (1) The Services Co-ordinator may enter into a contract with any person (referred to in this Part as a *sub-contractor*) under which the person agrees to carry out any of the functions of the Services Co-ordinator.
- (2) If the Services Co-ordinator is not the EPA, such a contract may be entered into only with the approval of the EPA.

58 Functions of EPA

- (1) The EPA is to ensure that any contract or other arrangement under which the Services Co-ordinator is appointed (if it is not the EPA), or a sub-contractor is appointed, includes such provisions as the EPA considers appropriate:
 - (a) to ensure that the objects and aims of the scheme are attained, and
 - (b) to ensure that the Services Co-ordinator or sub-contractor is accountable for its performance in connection with the scheme.

- (2) Without limiting subclause (1), the contract or arrangement may require the Services Co-ordinator or sub-contractor:
- (a) to make and keep records in connection with the exercise of its functions under this Regulation and the contract, and
 - (b) to retain those records for at least 4 years after they are made, and
 - (c) to make those records available to the EPA on request, and
 - (d) to establish and maintain suitable monitoring stations for the purpose of detecting contraventions of this Regulation, and
 - (e) to advise the EPA of any suspected contravention of this Regulation, and
 - (f) to provide the EPA with copies of the River Register, and
 - (g) to report to the EPA or, in the case of a sub-contractor, to the Services Co-ordinator, on the performance of its functions under the contract or arrangement.

Division 2 Operations Committee

59 Appointment of Operations Committee

- (1) There is constituted by this Regulation a body corporate to be called the Hunter River Salinity Trading Scheme Operations Committee.
- (2) The Operations Committee is to consist of the following members, each of whom is to be appointed by the EPA:
 - (a) one person who is a member of the Hunter Catchment Management Trust or a person nominated by the Hunter Catchment Management Trust,
 - (b) 3 persons appointed to represent the interests of credit holders or licence holders (or both),
 - (c) 1 person appointed to represent the interests of persons who use water from the Hunter River catchment for irrigation,
 - (d) 1 person appointed to represent environmental interests,
 - (e) 1 person who is a member of a committee or other organisation concerned in the management of the Hunter River or of any other river in the Hunter River catchment,

- (f) 1 person who is an officer or employee of the Department of Land and Water Conservation, appointed on the nomination of the head of that Department.
- (3) The member referred to in subclause (2) (a) is to be Chairperson of the Operations Committee.
- (4) Schedule 2 has effect.

60 Functions of Operations Committee

- (1) The Operations Committee has the following functions:
 - (a) to advise the EPA on such matters as are referred to it by the EPA in connection with the operation of the scheme,
 - (b) such other functions as may be conferred or imposed on it by the EPA in connection with the scheme.
- (2) The EPA may appoint the Operations Committee as Services Co-ordinator.

61 Failure by Operations Committee to perform functions

- (1) If the EPA is not satisfied with the performance of the Operations Committee under this Regulation, the EPA may:
 - (a) suspend the Operations Committee from performing its functions under this Regulation, and
 - (b) remove any or all of the members of the Committee from office (as provided by Schedule 2).
- (2) If the EPA appoints the Operations Committee as Services Co-ordinator, and is not satisfied with the performance of the Operations Committee as Services Co-ordinator, the EPA may do any of the following:
 - (a) terminate the appointment of the Operations Committee as Services Co-ordinator,
 - (b) suspend the Operations Committee from performing any of the functions of Services Co-ordinator (in which case the EPA is to carry out those functions during the suspension period),
 - (c) remove any or all of the members of the Committee from office (as provided by Schedule 2).

Part 7 Cost recovery

Division 1 Contribution payable by participants towards costs of scheme

62 Participants required to contribute toward costs of scheme

- (1) A person who, at any time during a scheme year, is a participant in the scheme is required to pay to the EPA a contribution as referred to in section 295H of the Act, calculated in accordance with this Part.
- (2) The EPA is to inform each person who is required to pay a contribution under this clause of the amount that the person is required to pay, by notice in writing given to the person.
- (3) The contribution must be paid within 30 days after the notice is given by the EPA, or by such later date as may be specified by the EPA in the notice.
- (4) If a contribution is not paid by the due date for its payment, the contribution is to be increased by the amount of simple interest calculated at the rate of 5 per cent per fortnight on the amount of the contribution unpaid for each whole fortnight that elapses after the due date and before the date of payment.

Note. The EPA is not required to pay a contribution under this Part (see section 295H (6) of the Act).

63 Calculation of contribution

The contribution payable by a person under this Part is calculated as follows:

$$C = Cr + L$$

Where:

C is the contribution payable by the person,

Cr is the contribution payable by the person on the person's credit holdings (if any) during the scheme year, calculated in accordance with clause 64,

L is the contribution payable by the person on the discharge licence (if any) held by the person during the scheme year, calculated in accordance with clause 65.

Note. The calculation of the contribution payable by a participant in the scheme is based on their average credit holdings during the scheme year and their licence. If the participant held a discharge licence but did not hold any credits during the scheme year, the participant will only be liable for a contribution on the participant's licence ("***L***" in the formula above). If the participant held credits but not a discharge licence, the participant will only be liable for a contribution on the participant's average credit holdings during the scheme year ("***Cr***" in the formula above). If the participant held credits and a discharge licence, the participant will be liable for a contribution in respect of both.

64 Contribution on credit holdings

- (1) The contribution payable by a person on the person's credit holdings during the scheme year is calculated as follows:

$$Cr = \frac{TC}{2} \times \frac{AvCr}{SCr}$$

Where:

Cr is the contribution payable on the person's credit holdings during the scheme year,

TC is the total cost of the scheme for the scheme year (calculated under Division 2),

Note. ***TC*** is divided by 2 in the formula because the other half of the annual cost of the scheme is paid by participants who are discharge licence holders. Participants who hold both credits and a discharge licence will be liable to contribute both as credit holders and licence holders.

AvCr is the average number of credits held by the person during the scheme year, calculated in accordance with subclause (2),

SCr is 1000, minus the average number of credits (if any) held by the EPA during the scheme year, calculated in accordance with subclause (2).

- (2) The average number of credits held by a person during a scheme year is to be calculated as follows:

$$AvCr = \frac{TCr}{B}$$

Where:

AvCr is the average number of credits held by the person during the scheme year,

TCr is the total number of credits (being credits that were in force at any time during the scheme year) held by the person in respect of each block in the scheme year (see examples in subclause (3)),

Note. If the lifespan of a credit has not started yet, it will not be counted in the above calculation.

B is the number of blocks in the scheme year (that is, 365 or 366 in a leap year).

- (3) **Calculating “TCr”.** Examples of the calculation of **TCr** are as follows:

Example 1. The person held 30 credits throughout the scheme year.

$TCr = 30 \times (365 \text{ or } 366)$ (that is, the number of blocks in the scheme year)

Example 2. The person held 30 credits in respect of the last 100 blocks in the scheme year and did not hold any credits in respect of the first 265 or 266 blocks of the scheme year.

$TCr = 30 \times 100$

Example 3. The person held 5 credits in respect of the first block, 10 in respect of the second, 4 in respect of the third and so on (that is, the person's credit holdings varied through out the year)

$TCr = 5 + 10 + 4$ and so on (until all credit holdings in respect of all blocks in the scheme year are counted).

- (4) For the purposes of this clause, a person is taken to hold a credit in respect of a block if the person held a credit in respect of a block immediately before midnight at the end of the 24-hour period that the block represents.
- (5) For the purpose of determining who held a credit at that time, the Credit Register is conclusive. If the credit was transferred to the holder in contravention of this Regulation, the holder is still liable to pay a contribution to the EPA in respect of the credit.

65 Contribution on licence

- (1) The contribution payable by a person on a discharge licence held by the person is calculated as follows:

$$L = \frac{TC}{2TL}$$

Where:

L is the contribution payable on the person's discharge licence,

TC is the total cost of the scheme for the scheme year (calculated under Division 2),

Note. *TC* is divided by 2 in the formula because the other half of the annual cost of the scheme is paid by participants who are credit holders in the scheme. Participants who hold both a discharge licence and credits will be liable to contribute both as licence holders and credit holders.

TL is the total number of discharge licences held by participants in the scheme during the scheme year, being licences that were in force for more than 30 days during the scheme year.

- (2) A contribution is payable by a person on a discharge licence held by the person only if the licence was in force for more than 30 days during the scheme year.

66 Contributions on forfeited credits

- (1) For the purposes of this Part, a person is taken to continue to hold a credit that is forfeited to the EPA under this Regulation until the EPA sells the credit.
- (2) Any such credit is not to be considered to be held by the EPA for the purposes of a calculation made under this Part.
- (3) The object of this clause is to ensure that participants who forfeit credits remain liable to make a contribution under this Part in respect of the credit.

Division 2 Calculating total cost of scheme for scheme year

67 Total cost of scheme for scheme year ("TC")

For the purposes of this Part, the total cost of the scheme for a scheme year is the total of the following:

- (a) the costs of the Services Co-ordinator for the scheme year, being the cost assessment made by the Services Co-ordinator under this Division and, if the Services Co-ordinator is not the EPA, concurred with by the EPA,

- (b) the costs of the Registrar for the scheme year, being the cost assessment made by the Registrar under this Division and, if the Registrar is not the EPA, concurred with by the EPA,
- (c) the costs of the EPA in connection with the scheme for the scheme year, being the cost assessment made by the EPA in accordance with this Division.

68 Costs of Services Co-ordinator

- (1) The Services Co-ordinator must, at the end of each scheme year, make an assessment of the costs of the Services Co-ordinator for the scheme year.
- (2) The costs are to comprise the following:
 - (a) the costs incurred by the Services Co-ordinator in carrying out its functions as Services Co-ordinator under this Regulation,
 - (b) the costs incurred by the Services Co-ordinator in engaging any other person to carry out any functions under this Regulation.

69 Costs of Registrar

- (1) The Registrar must, at the end of each scheme year, make an assessment of the costs of the Registrar for the scheme year.
- (2) The costs are to comprise the costs incurred by the Registrar in carrying out its functions under this Regulation, including the costs associated with providing and maintaining the Credit Register.

70 Costs of EPA

- (1) The EPA must, at the end of each scheme year, make an assessment of the costs incurred by the EPA in connection with the scheme for the scheme year.
- (2) The costs are to comprise the costs incurred by the EPA in carrying out its functions under this Regulation, being costs that are not included in the cost assessments made by the Registrar or the Services Co-ordinator, such as the following costs:
 - (a) the costs incurred by the EPA in connection with the appointment (if any) of the Registrar, the Services Co-ordinator and members of the Operations Committee, and in exercising any of its other functions in connection with the Registrar, the Services Co-ordinator or the Operations Committee,

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- (b) the costs incurred by the EPA in connection with the sale of credits, other than auction costs that are recovered as provided for by clause 20.

Part 8 Enforcement

71 General enforcement power of EPA

- (1) The EPA may, by order in writing served on a person:
 - (a) suspend any or all credits held by the person, and
 - (b) prohibit the person from transferring or accepting the transfer of credits, or impose conditions on any such transfers.
- (2) Such an order (an *enforcement order*) may be made only if the EPA is satisfied that the person:
 - (a) has contravened a provision of this Regulation, or
 - (b) has contravened a condition of the person's licence, being a condition that relates to the scheme.
- (3) An enforcement order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order.
- (4) An enforcement order may be expressed to have effect for a specified period, or until the fulfilment of specified conditions, or until further order of the EPA, subject to clause 72.
- (5) An enforcement order has effect according to its tenor, despite any other provision of this Regulation.
- (6) A person must not contravene the terms of an enforcement order.

Maximum penalty:

 - (a) in the case of a corporation—400 penalty units, and
 - (b) in the case of an individual—200 penalty units.
- (7) An enforcement order does not affect the liability of a person to pay a contribution in respect of a licence or credit under this Regulation.
- (8) This clause does not prevent any proceedings being taken for an offence against the Act or this Regulation.

72 Confirmation of enforcement order

- (1) An enforcement order ceases to be in force at the end of the period of 60 days after the order takes effect, unless the EPA confirms the

making of the enforcement order before the end of that period, in accordance with this clause.

- (2) The making of an enforcement order is confirmed if notice of the confirmation is served on the person against whom the order was made.
- (3) The EPA must not confirm the making of an enforcement order unless:
 - (a) it has given notice to the person against whom the order was made of its reasons for making the order, and
 - (b) it has given the person a reasonable opportunity to make submissions with respect to the order, and
 - (c) it has taken into consideration any such submissions by the person.

73 Forfeiture of credits

- (1) The EPA may, by order in writing served on a person, require the forfeiture of any credits held by the person to the EPA.
- (2) Such an order (a *forfeiture order*) may be made only if the EPA is satisfied that the person:
 - (a) has contravened a provision of this Regulation, or
 - (b) has contravened a condition of the person's licence, being a condition that relates to the scheme, or
 - (c) has failed to pay a contribution required under this Regulation by the due date for its payment.
- (3) The order is to specify the number of credits forfeited.
- (4) In the case of a forfeiture order made because of a contravention of this Regulation, the EPA may, in determining how many credits are to be forfeited, take into account:
 - (a) any pecuniary benefit that has been obtained by the person, or any cost that has been avoided by the person, because of the contravention, and
 - (b) any other relevant matters.
- (5) In the case of a forfeiture order made because of a failure to pay a contribution by the due date for its payment, the EPA may order the forfeiture of the number of credits that, in the opinion of the EPA,

would, if sold by auction or public tender, raise an amount sufficient to meet the following:

- (a) the contribution that is payable by the person, together with any interest payable on the contribution, and
 - (b) the costs that are likely to be incurred by the EPA in connection with the sale of the credits.
- (6) A forfeiture order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order.
- (7) On the date that a forfeiture order takes effect, the credit or credits specified in the order are forfeited to the EPA.
- (8) This clause does not prevent any proceedings being taken:
- (a) for an offence against the Act or this Regulation, or
 - (b) for the recovery of a contribution as a debt payable to the EPA, as provided for by section 295H (3) of the Act.

Note. Under section 295H (3) of the Act, a contribution payable to the EPA is recoverable by the EPA as a debt in a court of competent jurisdiction.

74 Notice of reasons for making forfeiture order

- (1) The EPA must not make a forfeiture order unless:
- (a) it has given notice to the person against whom the order is to be made of its intention 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 person a reasonable opportunity to make submissions with respect to the proposed order, and
 - (d) it has taken into consideration any such submissions by the person.
- (2) For the purpose of preventing the trading of credits that are proposed to be forfeited under the forfeiture order, the EPA may make an enforcement order against the person, with effect from the date notice of its intention to make the forfeiture order is given to the person.

75 Effect of forfeiture order

- (1) A forfeited credit continues in force as if it had not been forfeited, except that the EPA becomes the holder of the credit.
- (2) The EPA is to make arrangements for the sale of any credits forfeited to the EPA by auction or public tender.
- (3) This clause is subject to Part 7 (which requires a person who forfeits a credit to continue to pay to the EPA a contribution in respect of the credit until it is sold).

76 Offence of providing false information

A person who, in or in connection with an application for credits or any other application or information provided to the EPA, the Services Co-ordinator or the Registrar under this Regulation, provides any information, or makes any statement, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units,
- (b) in the case of an individual—100 penalty units.

Note.

Other enforcement powers

The Act also provides that certain offences can be dealt with by the issue of a penalty notice (sometimes referred to as on the spot fine) by an authorised officer. Under the *Protection of the Environment Operations (Penalty Notices) Regulation 1999*, an officer or employee of the EPA is authorised to issue a penalty notice for the offence of contravening a licence condition (including the licence conditions referred to in Part 4). In such a case, the on the spot fine is \$1,500 (in the case of a corporation) or \$750 (in the case of an individual). If the offence is dealt with by a court, the maximum penalty that the court can impose for the offence is \$250,000 (in the case of a corporation) or \$120,000 (in the case of an individual).

Part 9 Miscellaneous

77 Suspension of scheme

- (1) A suspension of the scheme, or part of the scheme, as provided by section 293A of the Act, may be effected by the EPA by order published in the Gazette.

Note. The Act requires the EPA to undertake public consultation before suspending the scheme, unless the suspension is required urgently in order to protect the environment, public health, property, or the integrity of the scheme, or is necessary because of an emergency.

- (2) The order is to specify the period during which the scheme or part of the scheme is suspended, but that period may be extended by further order published in the Gazette.
- (3) The order may specify the effect of the suspension on any rights conferred or obligations imposed under the scheme.
- (4) It is a condition of a discharge licence that the holder of the licence does not discharge saline water during any period in which the scheme or part of the scheme is suspended by the EPA, except with the written approval of the EPA or in accordance with the terms of any order made under this clause.
- (5) Subclause (4) has effect despite the discharge rules.

78 Review of Regulation—timetable

The review referred to in section 295C of the Act is to be undertaken by the Minister as soon as possible after the period of 10 years from the date of commencement of this Regulation.

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001

Part 10 Savings and transitional provisions

79 Regulation supersedes pilot scheme

- (1) On the commencement of this Regulation, the pilot scheme is terminated and all pilot scheme credits cease to have effect.
- (2) The provisions of this Regulation supersede the guidelines and rulebook relating to the pilot scheme (being documents published by the EPA), and the provisions of those guidelines and rulebook cease to have effect when this Regulation commences.

80 DLWC to operate as Services Co-ordinator

- (1) On the commencement of this Regulation, the Water Administration Ministerial Corporation is taken to have been appointed by the EPA as Services Co-ordinator.
- (2) This clause does not prevent the EPA from terminating the appointment of the Water Administration Ministerial Corporation as Services Co-ordinator or varying the terms of that appointment.

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Schedule 1 Allocation of first issue credits

(Clause 14)

Credit Holder	Licence Number (if applicable)	Premises Name (if applicable)	Number of credits
Bayswater Colliery Company Pty Ltd	113	Bayswater Colliery	25
Bengalla Mining Company Pty Ltd	6538	Bengalla Mine	35
Camberwell Coal Pty Limited	3390	Camberwell Coal Mine Colliery Holding	15
Cumnock No 1 Colliery Pty Limited	37	Cumnock No 1 Colliery	15
Dartbrook Coal Pty Limited	4885	Dartbrook Coal Mine	15
Drayton Coal Pty Ltd	1323	Drayton Coal Mine Colliery Holding	25
Coal & Allied Industries Limited	640	Hunter Valley Operations	120
Lemington Coal Mines Limited	1497	Lemington Coal Mine Colliery Holding	40
Liddell Coal Operations Pty Limited	2094	Liddell Colliery Holding	55
Hunter Valley Coal Corporation Pty Limited	4460	Mt Owen Coal Mine	30
Muswellbrook Coal Company Ltd	656	Muswellbrook No. 2 Open Cut Coal Mine	10
Macquarie Generation	779	Bayswater Power Station	230
Coal & Allied Industries Limited	1976	Mt Thorley Colliery Holding	0
Peabody Resources Limited	2652	Ravensworth Mine	70
Peabody Resources Limited	10860	Peabody Resources Ltd	15
Rix's Creek Pty Limited	3391	Rix's Creek Colliery	25
Bulga Coal Management Pty Limited	563	Saxonvale Colliery Holding	40
United Collieries Pty Limited	3141	United Colliery	10
Wambo Mining Corporation Pty Ltd	529	Wambo Mining Corporation	35
Warkworth Mining Ltd	1376	Warkworth Colliery Holding	40

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Redbank Project Pty Limited	11262	Redbank Power Station	35
Nardell Coal Corporation Pty Ltd	10337	Nardell Coal Corporation Pty Ltd	30
NSW Environment Protection Authority	na	EPA (Reserve)	85
TOTAL CREDITS			1,000

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Schedule 2 Constitution and procedure of Operations Committee

(Clause 59)

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Operations Committee.

member means any member of the Operations Committee.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule, a member 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.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the member.

4 Deputies

- (1) The EPA may, from time to time, appoint a person to be the deputy of a member, and the EPA may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and

- (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member 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 EPA, or
 - (d) is removed from office by the EPA under this clause, or
 - (e) is absent from 4 consecutive meetings of the Operations Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the EPA or unless the member is excused by the EPA 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 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 EPA may at any time remove a member from office.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson

- (1) The Chairperson vacates office as Chairperson if the person:

- (a) is removed from office by the EPA under this clause, or
 - (b) ceases to be a member.
- (2) The EPA may at any time remove the Chairperson from office as Chairperson.

8 Disclosure of pecuniary interests

- (1) If:
 - (a) a member of the Operations Committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Operations Committee, and
 - (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 Operations Committee.
- (2) A disclosure by a member at a meeting of the Operations Committee 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 which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Operations Committee in the minutes of the meeting concerned.
- (4) A member of the Operations Committee is not disqualified from taking part in any deliberation of the matter, or in a decision with respect to the matter, because of the member's pecuniary interest.
- (5) A contravention of this clause does not invalidate any decision of the Operations Committee.

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2001

Part 3 Procedure

9 Procedures of Operations Committee

Subject to this Schedule, the procedures of the Operations Committee are to be determined by the EPA and, subject to any such determination, by the Operations Committee.

10 Quorum

The quorum for a meeting of the Operations Committee is a majority of its members for the time being.

11 Presiding member

- (1) The Chairperson is to preside at a meeting of the Operations Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Operations Committee at which a quorum is present is the decision of the Operations Committee.

13 Minutes

The Operations Committee is required to keep minutes of proceedings at its meetings.

Dictionary

In this Regulation:

authorised discharge point means a discharge point in the Hunter River catchment that is specified in a discharge licence, being a point that is used by the EPA to monitor discharges of pollutant by the licence holder or to set limits on those discharges (or both).

block or ***river block*** means a block identified in the River Register, as referred to in clause 24.

credit means a credit in the scheme.

Credit Register means the Credit Register required to be kept under this Regulation.

credit trading facility means the facility for the trading of credits provided by the Registrar, as referred to in Part 5.

discharge licence is defined in clause 6.

discharge rules means the provisions set out in Part 4.

enforcement order means an order made by the EPA under clause 71.

first issue credit means any of the first 1,000 credits created in the scheme by the EPA.

flood flow block means a block classified as a flood flow block in relation to a particular sector under this Regulation and identified as such by entry in the River Register.

forfeiture order means an order made by the EPA under clause 73.

high flow block means a block classified as a high flow block in relation to a particular sector under this Regulation and identified as such by entry in the River Register.

Hunter River catchment is defined in clause 7.

lifespan of a credit means the period (expressed in terms of sequential blocks) for which it remains in force.

low flow block means a block classified as a low flow block in relation to a particular sector under this Regulation and identified as such by entry in the River Register.

lower sector means that part of the Hunter River catchment downstream of the middle sector reference point and upstream of the base reference point.

lower sector reference point means the Department of Land and Water Conservation gauging station at Singleton.

middle sector means that part of the Hunter River catchment downstream of the upper sector reference point and upstream of the middle sector reference point.

middle sector reference point means the Department of Land and Water Conservation gauging station immediately upstream of the confluence of the Hunter River and Glennies Creek.

non-discharge licence means a licence, not being a discharge licence, that applies to premises referred to in Schedule 1.

on-line service means a service provided by or through the facilities of a computer communication system and access through a telecommunications network that allows for:

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data from one computer to another.

Operations Committee means the Hunter River Salinity Trading Scheme Operations Committee established by the EPA under this Regulation.

participant in the scheme has the meaning given by clause 5.

pilot scheme means the pilot scheme of the same name as the scheme established by this Regulation that was conducted by the EPA and the Department of Land and Water Conservation before the commencement of this Regulation.

pilot scheme credit means a credit in the pilot scheme.

pilot scheme participant means a person who, immediately before the commencement of this Regulation, held credits in the pilot scheme.

registered credit trader means a person who is registered by the Registrar as a credit trader under Part 5.

Registrar means the EPA or a person or body appointed by the EPA as Registrar.

residual first issue credit means any first issue credit that allocated to the EPA as provided for by Schedule 1.

River Register means the River Register required to be kept under this Regulation.

saline water means water with an electrical conductivity of not less than 400 microSiemens per centimetre.

salinity target means a salinity target for the Hunter River catchment set out in clause 23.

scheme means the Hunter River Salinity Trading Scheme established by this Regulation.

scheme year means a period of 12 months commencing on:

- (a) the date of commencement of this Regulation, or
- (b) the anniversary of the date of commencement of this Regulation.

sector means the upper sector, the middle sector or the lower sector.

sequential blocks means blocks that have identification numbers that are in sequential order.

Services Co-ordinator means the EPA or the person or body appointed by the EPA as Services Co-ordinator.

site discharge period, in relation to an authorised discharge point, means the site discharge period determined under Part 3 for a high flow or flood flow block and entered in the River Register.

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

total allowable discharge means the total allowable discharge of salt for a block determined under Part 3 and entered in the River Register.

tributary protection limit of a discharge licence holder means an amount specified in a discharge licence as the maximum amount of saline water that may be discharged by a licence holder from an authorised discharge point during any specified period.

upper sector means that part of the Hunter River catchment upstream of the upper sector reference point.

upper sector reference point means the Department of Land and Water Conservation gauging station upstream of the confluence of the Hunter and Goulburn Rivers at Denman.

volume discharge limit of a discharge licence holder means the amount calculated under Division 3 of Part 4.