



# Contaminated Land Management Regulation 2013

under the

Contaminated Land Management Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Contaminated Land Management Act 1997*.

ROBYN PARKER, MP  
Minister for the Environment

## Explanatory note

The object of this Regulation is to remake, with amendments providing for the indexation of certain costs and fees, the provisions of the *Contaminated Land Management Regulation 2008* which is repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) specifies the hourly rate that the Environment Protection Authority (*EPA*) can charge so as to recover the administrative costs that it incurs in connection with preparing and serving orders relating to the management of contaminated land, or assessing and settling the terms of voluntary management proposals, or the costs that the EPA incurs in connection with monitoring action under, or seeking compliance with, such orders and proposals and provides for the annual indexation of that hourly rate based on increases or decreases in public sector wages, and
- (b) imposes a requirement for the EPA to inform a person on whom certain orders are served of that hourly rate, and
- (c) specifies the fees required to accompany applications for accreditation as a site auditor and the fees for the grant of such accreditation and provides for the annual indexation of those fees based on increases or decreases in public sector wages, and
- (d) specifies the time within which an accredited site auditor must make an application for renewal of his or her accreditation, and
- (e) lists the matters that must be included in the annual return that a site auditor is required to prepare, and

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Explanatory note

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- (f) specifies the offences that may be dealt with by penalty notices (on-the-spot-fines) and the penalty applicable when they are dealt with in that manner, and
- (g) specifies the types of amendments to EPA guidelines that are sufficiently minor to not require a consultative process to be undertaken, and
- (h) specifies the time within which a statement of reasons for certain decisions of the EPA is required to be provided to a person who requests such a statement.

This Regulation is made under the *Contaminated Land Management Act 1997*, including sections 34 (a), (b) and (c), 50 (2) (c), 51 (5), 52 (1) (c) and (9), 53D (3), 92A, 105 (7), 106 (2) and 112 (the general regulation-making power).

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Clause 1 Contaminated Land Management Regulation 2013

Part 1 Preliminary

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# Contaminated Land Management Regulation 2013

under the

Contaminated Land Management Act 1997

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Contaminated Land Management Regulation 2013*.

### 2 Commencement

This Regulation commences on 1 September 2013 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Contaminated Land Management Regulation 2008* which is repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

- (1) In this Regulation:  
*the Act* means the *Contaminated Land Management Act 1997*.
- (2) Notes included in this Regulation do not form part of this Regulation.

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## **Part 2 Recovery of certain administrative costs by EPA**

### **4 Recovery of EPA's administrative costs associated with orders and proposals**

- (1) The object of this clause is to prescribe the amount that the EPA can require a person to pay so as to recover the costs incurred by the EPA in connection with any of the following:
  - (a) preparing and serving an order under Part 3 of the Act to which the person is subject or assessing and settling the terms of any voluntary management proposal to which the person is a party,
  - (b) monitoring action under such an order or under an approved voluntary management proposal to which the person is an approved party,
  - (c) seeking the compliance of the person with any such order or approved voluntary management proposal.
- (2) For the purposes of section 34 (a), (b) and (c) of the Act, the amount of \$80 per hour (or part of an hour) is prescribed.

**Note.** This amount is adjusted on 1 September each year under clause 10.

### **5 Notice of rate of EPA's administrative costs associated with orders and proposals**

On service of an order under Part 3 of the Act, the EPA is to give the person on whom the order is served written notification of the amount prescribed by clause 4 (as adjusted in accordance with clause 10).

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Clause 6 Contaminated Land Management Regulation 2013

Part 3 Accreditation of persons as site auditors

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### Part 3 Accreditation of persons as site auditors

#### 6 Application fee for accreditation as site auditor

For the purposes of section 50 (2) (c) of the Act, the prescribed application fee is \$1,000.

**Note.** This amount is adjusted on 1 September each year under clause 10.

#### 7 Accreditation fee for accreditation as site auditor

For the purposes of sections 51 (5) and 52 (9) of the Act, the prescribed accreditation fee is as follows:

- (a) if the accreditation period is 1 year or less—the fee is \$7,000,
- (b) if the accreditation period is 2 years or less but longer than 1 year—the fee is twice the fee under paragraph (a),
- (c) if the accreditation period is longer than 2 years—the fee is three times the fee under paragraph (a).

**Note.** These amounts are adjusted on 1 September each year under clause 10.

#### 8 Time for making renewal applications

For the purposes of section 52 (1) (c) of the Act, an application for renewal must be made not more than 60 days and not less than 30 days before expiry of the current accreditation period.

#### 9 Particulars to be included in annual returns of accredited site auditors

For the purposes of section 53D (3) of the Act, the prescribed particulars to be included in an annual return are the following particulars of each site audit as at the date of completion of the audit (or, if the audit is not complete, as at the date of the annual return):

- (a) the location of the site (including Lot and DP numbers, street address, suburb and local government area),
- (b) the size of the site, its land zoning under the *Environmental Planning and Assessment Act 1979* and (if a change in zoning is proposed) its proposed zoning,
- (c) the date on which the auditor received the request,
- (d) the date of commencement of the audit,
- (e) the date or expected date of completion of the audit,
- (f) the use or uses of the site that have given rise to the contamination for which remedial action was carried out,
- (g) the current use to which the site is being put and any proposed use,

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- (h) the auditor's opinion as to the suitability of the site for the current and proposed uses,
  - (i) the name of the person who carried out the remedial work that was reviewed or is being reviewed by the auditor and the titles of the reports (if any) by that person that were or are being reviewed.

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Clause 10 Contaminated Land Management Regulation 2013

Part 4 Miscellaneous

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### Part 4 Miscellaneous

#### 10 Adjustment of amounts

- (1) In this clause:
- adjustable amount** means any of the following:
- (a) the amount prescribed by clause 4,
  - (b) the amount of the fee prescribed by clause 6,
  - (c) the amount of the fee prescribed by clause 7 (a).
- Public Sector Wage Price Index** means the Wage Price Index (Public Sector) for New South Wales published by the Australian Statistician.
- Public Sector Wage Price Index number**, in relation to a quarter, means the number for that quarter appearing in the Public Sector Wage Price Index.
- year** means a year commencing on 1 September.
- (2) Each adjustable amount is, on 1 September in each year (starting on 1 September 2014), to be adjusted for increases or decreases in public sector wages as provided by this clause.
- (3) The adjustable amount that is to apply for a year is to be determined by multiplying the adjustable amount that applied for the previous year by the annual increase, or decrease, (as the case may be) in the Public Sector Wage Price Index during that previous year.
- (4) The annual increase or decrease in the Public Sector Wage Price Index during a year is to be calculated as  $B/A$  where:
- A** is the Public Sector Wage Price Index number for the last quarter for which such a number was published before the start of the year.
- B** is the Public Sector Wage Price Index number for the last quarter for which such a number was published before the end of the year.
- (5) If the determination of an adjustable amount for a year under this clause results in an amount that is not a whole number multiple of \$1, the amount calculated is to be rounded up to the nearest whole number multiple of \$1 and that amount as so rounded is the adjustable amount for that year.
- (6) Before the start of each year commencing 1 September 2014, the EPA is to publish notice of the adjustable amount for the year (as adjusted under this clause) on the following websites:
- (a) the NSW legislation website,
  - (b) the website of the EPA.



- (7) Any failure to publish a notice under subclause (6) does not affect any person's liability to pay an adjustable amount as adjusted under this clause.

**11 Penalty notices**

For the purposes of section 92A of the Act:

- (a) each offence arising under a provision specified in Column 1 of Schedule 1 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 1 (in respect of an individual) or in Column 3 of Schedule 1 (in respect of a corporation).

**12 Amendments to guidelines that do not require consultative process**

For the purposes of paragraph (c) of the definition of *minor amendment* in section 105 (7) of the Act, each of the following is declared to be a minor amendment:

- (a) an amendment that is consequential on a legislative change,
- (b) an amendment of a machinery nature.

**13 Time limit for giving reasons for certain decisions**

A statement of reasons requested as referred to in section 106 (1) of the Act must be provided to the person making the request within 30 days after the EPA receives the request.

**14 Saving**

Any act, matter or thing that, immediately before the repeal of the *Contaminated Land Management Regulation 2008*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Penalty notice offences

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### Schedule 1 Penalty notice offences

(Clause 11)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Offence under the Act</b>	<b>Penalty—Individual</b>	<b>Penalty—Corporation</b>
Section 10 (5)	\$1,500	\$5,000
Section 14 (6)	\$1,500	\$5,000
Section 28 (4)	\$1,500	\$5,000
Section 48 (1)	\$750	—
Section 48 (2)	—	\$1,500
Section 60 (1)	\$750	\$1,500
Section 60 (2)	\$750	\$1,500
Section 89 (1)	\$500	\$1,000