



New South Wales

Protection of the Environment Operations (General) Amendment (Load Reduction Agreements) Regulation 2001

under the

Protection of the Environment Operations Act 1997

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

BOB DEBUS, M.P.,

Minister for the Environment

Explanatory note

The object of this Regulation is to make the following changes relating to load reduction agreements, that is, agreements that result in licence fee reductions for environment protection licences:

- (a) to enable applicants for licences to apply to enter into the agreements,
- (b) to provide for the load limits for pollutants to be imposed on termination or expiration of agreements,
- (c) to extend the maximum term of an agreement from 3 years to 4 years,
- (d) to make it clear that the transferee of an environment protection licence is also subject to an existing agreement but may terminate it on transfer,
- (e) to enable requirements to provide financial assurances to be included in agreements,
- (f) to enable licensees to terminate agreements,

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- (g) to provide for the amounts to be paid to the EPA by a transferee or licensee who terminates an agreement or whose agreement is terminated, or on expiry of an agreement, having regard to targets reached under the agreement and future limits for emission of pollutants,
- (h) to terminate an agreement if the relevant licence is surrendered, suspended or revoked,
- (i) to correct references to certain abbreviations and to make other minor and consequential amendments.

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

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1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (Load Reduction Agreements) Regulation 2001*.

2 Commencement

This Regulation commences on 1 June 2001.

3 Amendment of Protection of the Environment Operations (General) Regulation 1998

The *Protection of the Environment Operations (General) Regulation 1998* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 3)

[1] Part 2.1, Division 5, heading

Omit “and rebates”. Insert instead “and fee reductions”.

[2] Clause 24A

Insert before clause 25:

24A Definitions

In this Division:

agreed load means the agreed load, in respect of a licence fee period, for an assessable pollutant under a load reduction agreement applicable to that pollutant.

load reduction agreement means a load reduction agreement entered into under this Division.

reported actual load means the actual load reported to the EPA by a licensee for an assessable pollutant for a licence fee period.

[3] Clause 25 Load reduction agreements and fee reductions

Insert “or applicant for a licence” after “licensee” where firstly occurring in clause 25 (1).

[4] Clause 25 (1)

Omit “rebate”. Insert instead “reduction”.

[5] Clause 25 (1)

Omit “by the licensee”. Insert instead “for a licence”.

[6] Clause 25 (4) (a)

Omit “rebate”. Insert instead “fee reduction”.

[7] Clause 25 (4) (b)

Insert “or applicant” after “licensee” wherever occurring.

[8] Clause 25 (6)

Omit “3”. Insert instead “4”.

[9] Clause 25A

Insert after clause 25:

25A Effect of transfer of licences on load reduction agreements

- (1) If a person who has entered into a load reduction agreement transfers the relevant licence, the transferee is, for the purposes of the agreement and this Regulation, taken to be a person who has entered into the agreement with the EPA.
- (2) A transferee may elect, on the transfer of the licence, to terminate the load reduction agreement and clauses 28, 28B and 28C apply to that termination.

[10] Clause 26

Omit the clause. Insert instead:

26 Content of load reduction agreements

- (1) A load reduction agreement must:
 - (a) specify the agreed load for an assessable pollutant for each licence fee period of the agreement, and
 - (b) specify the program proposed to be undertaken in order to attain the agreed load, and
 - (c) require the licensee to notify the EPA if the licensee becomes aware that it is likely that the licensee will not be able to attain the agreed load under the agreement, and
 - (d) set out the circumstances in which amounts are to be paid to the EPA on termination or expiry of the agreement, and

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- (e) provide that the agreement has no effect unless the licensee's licence is subject to a condition that, on termination or expiration of the agreement, the total load that may be emitted in respect of a licence fee period for an assessable pollutant that was covered by the agreement is to be:
 - (i) the same as the agreed load under the agreement, if the reported actual load for the pollutant for the licence fee period immediately preceding the termination or expiration did not exceed the agreed load, or
 - (ii) an amount determined by the EPA, after consultation with the licensee, that is higher than the agreed load, if the reported actual load for that period exceeded the agreed load.
- (2) A load reduction agreement may require a financial assurance to be supplied by the licensee to secure obligations in the event of termination or expiration of the agreement and must, in any such case, provide for the following matters:
 - (a) the circumstances in which the EPA may make a claim on or realise the financial assurance or part of it,
 - (b) that the calling on and use of a financial assurance does not affect any liability of the licensee,
 - (c) the effect of failure to provide a financial assurance.
- (3) A financial assurance may be in one or more of the following forms:
 - (a) a bank guarantee,
 - (b) a bond,
 - (c) another form of security that the EPA considers appropriate and specifies in the load reduction agreement.

[11] Clause 27 Calculation of reduction

Omit "The rebate" from clause 27 (1).

Insert instead "For the purposes of this Division, the reduction of a licence fee".

[12] Clause 27 (2) (a)

Omit “agreed load goal”. Insert instead “agreed load”.

[13] Clause 27 (2) (b)

Omit the paragraph. Insert instead:

- (b) must pay to the EPA the amounts of all reductions of licence fees under the agreement and the amount of simple interest on each amount calculated weekly at the rate of 20% per annum from the date on which the reduced amount was payable.

[14] Clauses 28, 28A, 28B and 28C

Omit clause 28. Insert instead:

28 Termination of agreement

- (1) The licensee may terminate the load reduction agreement before the end of the term of the agreement in accordance with the agreement.
- (2) If a licence is surrendered by the licensee or suspended or revoked, any load reduction agreement relating to licence fees for the licence is taken to have been terminated by the licensee.
- (3) The EPA may terminate a load reduction agreement if:
 - (a) the EPA is of the opinion that the licensee is unlikely to attain the agreed load before the end of the agreement, or that the licensee is unlikely to meet the costs of repayment on termination or expiration of the agreement, or both, or
 - (b) the licensee fails to comply with a condition of the agreement.
- (4) A licensee that terminates a load reduction agreement, or whose agreement is terminated, is not liable to pay an amount on termination in respect of an assessable pollutant if the reported actual load for the immediately preceding licence fee period did not exceed the agreed load for the pollutant under the agreement.

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- (5) A licensee that terminates a load reduction agreement, or whose agreement is terminated, must pay to the EPA the amounts calculated in accordance with clause 28B if the reported actual load for the immediately preceding licence fee period exceeded the agreed load for the pollutant under the agreement.

28A Liability of licensee on expiration of agreement

- (1) On the expiration of a load reduction agreement the licensee must pay to the EPA, in respect of an assessable pollutant covered by the agreement, the amounts required under this clause.
- (2) No amount is payable in respect of an assessable pollutant under this clause if the reported actual load for the immediately preceding licence fee period did not exceed the agreed load for the pollutant under the agreement.
- (3) If the reported actual load for the immediately preceding licence fee period exceeded the agreed load for the pollutant under the agreement, the licensee must pay to the EPA the amounts calculated in accordance with clause 28B.

28B Amounts payable on termination or expiration

- (1) The amounts payable on termination or expiration are as follows:
 - (a) for any licence fee period during the agreement in which the reported actual load exceeded the maximum load, the difference between the fee that would have been payable for that period if the load had been equal to the agreed load under the agreement and the fee that would have been payable if the load had been equal to the maximum load,
 - (b) for any licence fee period during the agreement in which the reported actual load for the pollutant did not exceed the maximum load, no amount is payable,
 - (c) the amount of simple interest on an amount payable under this subclause calculated at the rate of 20% per annum from the date that is 60 days after the end of each licence fee period.

(2) In this clause:

maximum load means the total load limit for an assessable pollutant that is imposed as a condition of a licence on the termination or expiration of a load reduction agreement.

28C When amounts must be paid

- (1) An amount payable under clause 28 or 28A must be paid not later than 60 days after a written request for payment of the amount is given to the licensee by the EPA.
- (2) If the amount is not paid (or not fully paid) by the due date for its payment, the amount is to be increased by the amount of simple interest calculated at the rate of 5% per fortnight on the amount unpaid for each whole fortnight that elapses after the due date and before the date of payment.

[15] Schedule 1 Licensing fees—activities and assessable pollutants

Omit “Gwh” wherever occurring. Insert instead “GWh”.

[16] Schedule 1

Omit “MT” wherever occurring. Insert instead “Mt”.

[17] Schedule 1

Omit “kT” wherever occurring. Insert instead “kt”.