



New South Wales

# **Protection of the Environment Operations (General) Amendment (National Pollutant Inventory) Regulation 2002**

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 give effect to, and enforce compliance with, the *National Environment Protection (National Pollutant Inventory) Measure* made under section 14 of the *National Environment Protection Council Act 1994* of the Commonwealth.

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

**2002 No 295**

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**Protection of the Environment Operations (General)  
Amendment (National Pollutant Inventory)  
Regulation 2002**

**1    Name of Regulation**

This Regulation is the *Protection of the Environment Operations (General) Amendment (National Pollutant Inventory) Regulation 2002*.

**2    Commencement**

This Regulation commences on 1 June 2002.

**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.

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## Schedule 1 Amendment

(Clause 3)

### Chapter 3A

Insert after Chapter 3:

## Chapter 3A National Pollutant Inventory

### Part 3A.1 General

#### 57A Object of Chapter

The object of this Chapter is to give effect to, and enforce compliance with, the *National Environment Protection (National Pollutant Inventory) Measure* made on 27 February 1998 under section 14 of the *National Environment Protection Council Act 1994* of the Commonwealth.

#### 57B Interpretation

- (1) In this Chapter:

**NPIM** means the *National Environment Protection (National Pollutant Inventory) Measure* made on 27 February 1998 under section 14 of the *National Environment Protection Council Act 1994* of the Commonwealth.

**occupier** means an occupier, within the meaning of the NPIM, to whom this Chapter applies.

**reporting threshold** for a substance means the reporting threshold for the substance specified in the NPIM.

- (2) The following words and expressions have the same meanings as they have in the NPIM:

**emission data**

**estimation technique**

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*facility* (as defined in clause 3 (3) and modified in clause 9 (5) of the NPIM).

*industry handbook*

*reporting facility*

*reporting period*

*substance*

*substance identity information*

*supporting data*

### 57C Occupiers to whom this Chapter applies

This Chapter applies to an occupier of a reporting facility for whom an industry handbook:

- (a) has been agreed between the participating jurisdictions referred to in the NIPM, and
- (b) is published by the Commonwealth.

## Part 3A.2 Reporting and record keeping requirements

### 57D Collection of data from reporting facilities

- (1) Subject to Part 3A.4, the occupier of each facility is to provide the EPA with the following information if a reporting threshold for a substance is exceeded in a reporting period:
  - (a) supporting data for the facility,
  - (b) substance identity information and emission data, determined and documented in accordance with clause 57F, for each substance for which the reporting threshold is exceeded in the period,
  - (c) any information that may be required to assess the integrity of the emission data,
  - (d) a statement, signed by the occupier or a person authorised by the occupier for that purpose, that the occupier has exercised due diligence in gathering and providing the information referred to in paragraphs (a)–(c).

(2) An occupier:

- (a) must provide the information referred to in subclause (1) to the EPA within 3 months after the end of the reporting period to which the information relates, and
- (b) must not provide any information to the EPA that is false or misleading in a material particular.

Maximum penalty (subclause (2)): 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

**57E Occupier must keep data for period of 4 years**

- (1) The occupier of a reporting facility must keep the data used in deciding if the reporting threshold for a substance is exceeded in the reporting period for the occupier's facility for 4 years after the reporting period ends.

Maximum penalty: 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

- (2) The occupier must keep the data used in calculating emission data given to the EPA for 4 years after the emission data is required to be given.

Maximum penalty: 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

### **Part 3A.3 Estimation techniques**

**57F Emission estimation techniques**

In estimating emission data for the purposes of providing information under clause 57D, each occupier of a reporting facility must use one of the following estimation techniques:

- (a) the estimation technique set out in the industry handbook for the facility,
- (b) any of the methods provided in the load calculation protocol for the relevant activity issued by the EPA and in force, as referred to in clause 18 (2),

- (c) another estimation technique approved by the EPA for the facility under this Part.

**57G Application for approval of estimation technique**

- (1) The occupier of a facility may apply to the EPA for approval of an estimation technique for emission data.
- (2) The application must be in writing, setting out the technique for which approval is sought and giving the information necessary to enable the EPA to decide the application.
- (3) The EPA may, by written notice given to the occupier, ask the occupier to give to the EPA, in the reasonable period stated in the notice, further relevant information to enable the EPA to decide the application.

**57H Approving estimation technique**

- (1) The EPA may approve the estimation technique, or approve it subject to a modification decided by the EPA.
- (2) In deciding whether to approve the estimation technique, or approve it subject to a modification, the EPA must have regard to the accuracy of the technique compared with the accuracy of estimation techniques in the relevant industry handbook.
- (3) The EPA may refuse to approve the technique if the EPA has given the occupier a notice under clause 57G (3) asking for further information and the occupier does not comply with the request in the period stated in the notice.
- (4) Immediately after making a decision under this clause, the EPA must give the occupier written notice of the decision.
- (5) If the EPA decides to approve the technique subject to a modification, the notice must state the modification.
- (6) If the EPA refuses to approve the technique, or approves it subject to a modification, the notice must state that the approval is refused or given subject to a stated modification to the technique and the reasons for the refusal or modification.
- (7) Subclause (8) applies if the EPA fails to give the occupier a notice about the EPA's decision on an application made by the occupier under clause 57G:

- (a) within 60 days after the application is made, or
  - (b) if the occupier gave the EPA further information under clause 57G (3)—within 60 days after receiving the further information.
- (8) The EPA's failure to give the notice is taken to be a decision by the EPA to refuse to approve the technique at the end of the relevant 60 days.

## **Part 3A.4 Exemptions from reporting requirements**

### **57I Exemption on ground of national security**

- (1) This clause applies if the occupier of a facility gives the EPA written evidence that:
  - (a) the occupier has made a claim to the Commonwealth under the NPIM that information required to be given by the occupier under clause 57D (2) (a) should be treated as confidential on the grounds of national security, and
  - (b) the claim:
    - (i) has been granted, or
    - (ii) has not been assessed before the occupier is required to give the information to the EPA.
- (2) Subject to subclause (3), the occupier is exempted from giving the information to the EPA.
- (3) If the exemption is given by reason of a claim referred to in subclause (1) (b) (ii) and the Commonwealth refuses the claim after the occupier is required to give the information to the EPA, the occupier must give the information to the EPA within 60 days after receiving notice of the Commonwealth's decision to refuse the claim.

**57J Claiming exemption on ground of commercial confidentiality**

- (1) The occupier of a facility may, by written notice given to the EPA, claim information required to be given by the occupier under clause 57D (2) (a) should be treated as confidential on the grounds of commercial confidentiality.
- (2) The notice must contain the information necessary to enable the EPA to decide the claim.
- (3) The EPA may, by written notice given to the occupier, ask the occupier to give the EPA, in the reasonable period stated in the notice, further relevant information to enable the EPA to decide the claim.

**57K Deciding claim for exemption on ground of commercial confidentiality**

- (1) The EPA may grant the claim only if the EPA reasonably believes that a document referring to the information would be an exempt document under clause 7 or 8 of Schedule 1 to the *Freedom of Information Act 1989*.
- (2) If the EPA grants the claim, the occupier is exempted from giving the information to the EPA.
- (3) The EPA may refuse to grant the claim if the EPA has given the occupier a notice under clause 57J (3) asking for further information and the occupier does not comply with the request in the period stated in the notice.
- (4) The EPA must give the occupier written notice of the EPA's decision on the claim.
- (5) If the EPA refuses to grant the claim, the notice must state that the claim is refused and the reasons for the refusal.
- (6) Subclause (7) applies if the EPA fails to give the occupier a notice about the EPA's decision on the claim:
  - (a) within 60 days after the claim is made, or
  - (b) if the occupier gave the EPA further information under clause 57J (3)—within 60 days after receiving the further information.



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- (7) The EPA's failure to give the notice is taken to be a decision by the EPA to refuse to grant the claim at the end of the relevant 60 days.

BY AUTHORITY