



New South Wales

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

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*.

ROBYN PARKER, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to make provision for the Upper Hunter Air Quality Monitoring Network, which is an environmental monitoring program established by the Environment Protection Authority (the *EPA*) under Part 9.3C of the *Protection of the Environment Operations Act 1997*.

The Regulation includes provisions:

- (a) to require holders of environment protection licences authorising coal mining and the generation of electricity from an energy source (other than wind or solar power) in the Upper Hunter region to pay a levy towards the cost of the monitoring program, and
- (b) to calculate the amount of the levy payable by those licence holders, and
- (c) to require licence holders to provide to the EPA information about emissions, and
- (d) to allow persons authorised by the EPA to enter land owned or occupied by the licence holders for the purposes of the operation of the monitoring program, and
- (e) to require the EPA to make air quality data available on its website and to publicly report on the monitoring program.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including Part 9.3C, section 323 (the general regulation-making power) and clause 8 of Schedule 2.

2013 No 51

Clause 1

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

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1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 2009

Chapter 5A

Insert after Chapter 5:

Chapter 5A Environmental monitoring—Upper Hunter Air Quality Monitoring Network

79A Preliminary

(1) In this Chapter:

annual levy means the component of the environmental monitoring levy payable each year by each Upper Hunter licence holder as calculated under clause 79D, 79E or 79F.

construction levy means the component of the environmental monitoring levy payable by certain Upper Hunter licence holders from time to time under clause 79H.

levy period means the period of 12 months commencing on 1 July in each year.

Upper Hunter coal mining licence holder means a person holding a licence that authorises the carrying out of mining for coal at premises located in the area subject to air quality monitoring under the Upper Hunter monitoring program.

Upper Hunter electricity generation licence holder means a person holding a licence that authorises the carrying out of the generation of electricity from any energy source (other than wind or solar power) at premises located in the area subject to air quality monitoring under the Upper Hunter monitoring program.

Upper Hunter licence holder means an Upper Hunter coal mining licence holder or an Upper Hunter electricity generation licence holder.

Upper Hunter monitoring program means the environmental monitoring program operated by or on behalf of the EPA in the Muswellbrook, Singleton and Upper Hunter Shire local government areas that monitors air quality in those areas and known as the Upper Hunter Air Quality Monitoring Network, and includes any changes made by the EPA to that program from time to time.

2013 No 51

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

Schedule 1

Amendment of Protection of the Environment Operations (General) Regulation 2009

- (2) This Chapter extends to the levy period commencing on 1 July 2012.

79B Objectives of Upper Hunter monitoring program

The objectives of the Upper Hunter monitoring program are as follows:

- (a) to provide government, industry and the community with reliable and up-to-date information on air quality in the Muswellbrook, Singleton and Upper Hunter Shire local government areas,
- (b) to enable the air quality in those areas to be assessed against relevant air pollution standards,
- (c) to facilitate the identification of sources of air pollution in those areas,
- (d) to facilitate the development and implementation of strategies to improve air quality in those areas.

79C Upper Hunter licence holders required to pay environmental monitoring levy

- (1) Upper Hunter licence holders are required to pay an environmental monitoring levy in respect of the Upper Hunter monitoring program under this Chapter.
- (2) The environmental monitoring levy payable by an Upper Hunter licence holder for a levy period consists of the following components:
 - (a) the annual levy,
 - (b) the construction levy (if any).
- (3) The EPA is to provide written notice to each Upper Hunter licence holder of the amount of the annual levy or the construction levy (or both) that the licence holder is required to pay for a levy period.
- (4) The levy must be paid within 30 days after the notice is given by the EPA or by such later date as is specified by the EPA in the notice.
- (5) If a levy is not paid by the due date, the levy is to be increased by the amount of simple interest calculated at the rate of 25% per year on the amount of the levy unpaid for each day that elapses after the due date and before the date of payment.

79D Calculation of annual levy for Upper Hunter electricity generation licence holders

- (1) The amount of the annual levy payable by an Upper Hunter electricity generation licence holder for a levy period is calculated as follows:

$$EGL = (0.9 \times F \times G/H) + (0.1 \times F \times I/J)$$

where:

EGL is the amount of the annual levy payable by an Upper Hunter electricity generation licence holder for a levy period.

F is the estimated cost of the Upper Hunter monitoring program for the levy period as determined under clause 79G.

G is the amount of particulate matter emitted from the premises to which the licence concerned applies during the previous levy period.

H is the sum of the amounts of particulate matter emitted from all Upper Hunter licensed premises during the previous levy period.

I is the amount of oxides of nitrogen and sulphur dioxide emitted from the premises to which the licence concerned applies during the previous levy period.

J is the sum of the amounts of oxides of nitrogen and sulphur dioxide emitted from all Upper Hunter licensed premises during the previous levy period.

- (2) A reference in any of the components of the formula in subclause (1) to an amount is a reference to the amount provided to the EPA by an Upper Hunter licence holder under clause 79I.
- (3) If any information required to calculate the amount of the annual levy is not available to the EPA, the EPA may calculate the amount of the levy based on reasonable estimates.
- (4) In this clause, *Upper Hunter licensed premises* means premises located in the area of the Upper Hunter monitoring program to which a licence authorising the carrying out of mining for coal or the generation of electricity from any energy source (other than wind or solar power) applies.

79E Calculation of annual levy for Upper Hunter coal mining licence holders

- (1) The amount of the annual levy payable by an Upper Hunter coal mining licence holder for a levy period is calculated as follows:

$$CML = (0.9 \times F \times K/H \times L/M) + (0.1 \times F \times N/J)$$

2013 No 51

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

Schedule 1

Amendment of Protection of the Environment Operations (General) Regulation 2009

where:

CML is the amount of the annual levy payable by an Upper Hunter coal mining licence holder for a levy period.

F is the estimated cost of the Upper Hunter monitoring program for the levy period as determined under clause 79G.

K is the sum of the amounts of particulate matter emitted from all Upper Hunter coal mining licensed premises during the previous levy period.

H is the sum of the amounts of particulate matter emitted from all Upper Hunter licensed premises during the previous levy period.

L is the amount of material moved at the premises to which the licence concerned applies during the previous levy period.

M is the sum of the amounts of material moved at all Upper Hunter coal mining licensed premises during the previous levy period.

N is the amount of oxides of nitrogen and sulphur dioxide emitted from the premises to which the licence concerned applies during the previous levy period.

J is the sum of the amounts of oxides of nitrogen and sulphur dioxide emitted from all Upper Hunter licensed premises during the previous levy period.

- (2) A reference in any of the components of the formula in subclause (1) to an amount is a reference to the amount provided to the EPA by an Upper Hunter licence holder under clause 79I.
- (3) If any information required to calculate the amount of the annual levy is not available to the EPA, the EPA may calculate the amount of the levy based on reasonable estimates.
- (4) In this clause:

Upper Hunter coal mining licensed premises means premises located in the area of the Upper Hunter monitoring program to which a licence authorising the carrying out of mining for coal applies.

Upper Hunter licensed premises means premises located in the area of the Upper Hunter monitoring program to which a licence authorising the carrying out of mining for coal or the generation of electricity from any energy source (other than wind or solar power) applies.

79F Calculation of annual levy for first and second levy periods for new Upper Hunter licence holders

- (1) The amount of the annual levy payable by a new Upper Hunter licence holder for the first levy period and the subsequent levy period is to be calculated in accordance with the formula set out in clause 79D (in the case of an Upper Hunter electricity generation licence holder) or 79E (in the case of an Upper Hunter coal mining licence holder) with such adjustments to the formula as the EPA considers necessary.

Note. For example, adjustments will be required because the formula uses the emissions produced by an Upper Hunter licence holder during the previous levy period to calculate the amount payable for a levy period. The amount payable by a new Upper Hunter licence holder for the first levy period will be calculated based on the emissions produced by the new licence holder during that first levy period.

- (2) A person who becomes an Upper Hunter licence holder on or after 1 May in a levy period is not required to pay an annual levy for that levy period. Such a person is taken to be a new Upper Hunter licence holder from 1 July in the next levy period.
- (3) In this clause, *new Upper Hunter licence holder* means a person who becomes an Upper Hunter licence holder on or after 1 July in a levy period (the *first levy period*).

79G Calculation of cost of Upper Hunter monitoring program

- (1) During each levy period, the EPA is to calculate an estimate of the cost to the EPA of the Upper Hunter monitoring program for that levy period.
- (2) After the end of a levy period, the EPA is to calculate the actual cost to the EPA of the Upper Hunter monitoring program for that levy period.
- (3) The actual cost to the EPA of the Upper Hunter monitoring program for a levy period in which a person becomes an Upper Hunter licence holder is to be reduced by the amount of any annual levy payable to the EPA for that levy period by that licence holder under clause 79F.
- (4) If the actual cost to the EPA of the program for the levy period exceeds the estimated program cost for that levy period, the amount of the difference is to be added to the estimated program cost for the next levy period and the program cost for that period is to be increased accordingly.
- (5) If the actual cost of the program for the levy period is less than the estimated program cost for that levy period, the amount of the difference is to be deducted from the estimated program cost for

2013 No 51

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

Schedule 1

Amendment of Protection of the Environment Operations (General) Regulation 2009

the next levy period and the program cost for that period is to be decreased accordingly.

- (6) The EPA may determine arrangements for payment of any additional annual levy, or a refund of an annual levy, that is required because of an adjustment to the program cost under this clause.
- (7) Without limiting section 295Z (4) of the Act, the cost of the Upper Hunter monitoring program includes:
 - (a) the costs associated with the use of equipment, facilities and infrastructure to monitor air quality under the program, and
 - (b) the costs associated with the administration of the program, including the costs associated with reporting on the program and any advisory committees established to advise the EPA in relation to the program.
- (8) However, the cost of the Upper Hunter monitoring program does not include the costs of construction of a new facility to monitor air quality if an Upper Hunter licence holder is required to pay a construction levy in respect of those costs under clause 79H.

79H Certain Upper Hunter licence holders to pay construction levy

- (1) An Upper Hunter licence holder is required to pay to the EPA a contribution towards the costs of construction of a new facility to monitor air quality under the Upper Hunter monitoring program (a *construction levy*).
- (2) However, an Upper Hunter licence holder is only required to pay a construction levy if, in the opinion of the EPA, the new facility is necessary because of the activities or works carried out by the licence holder under the licence concerned.
- (3) The amount of the construction levy payable by an Upper Hunter licence holder is the cost to the EPA of the construction of the new facility, including any costs associated with the construction.
- (4) If the new facility is necessary because of activities or works carried out by more than one Upper Hunter licence holder, the EPA is to determine the amount of the construction levy payable by each licence holder on a proportionate basis.

79I Upper Hunter licence holders to provide information to EPA

- (1) It is a condition of an Upper Hunter licence holder's licence that the licence holder provide the following information to the EPA

by 30 September (or by such later date as is notified to the licence holder by the EPA) in each levy period:

- (a) the amount of particulate matter emitted from the premises to which the licence applies during the previous levy period,
 - (b) the amount of oxides of nitrogen and sulphur dioxide emitted from the premises to which the licence applies during the previous levy period,
 - (c) in the case of an Upper Hunter coal mining licence holder—the amount of material moved at the premises to which the licence applies during the previous levy period.
- (2) The amounts of emissions and material moved during a levy period are to be calculated in accordance with the directions of the EPA.
- (3) An Upper Hunter licence holder is not required to provide information for a levy period if that information has previously been provided to the EPA in accordance with other reporting requirements that apply to the licence holder under the Act.

79J Upper Hunter licence holders to provide assistance to EPA

It is a condition of an Upper Hunter licence holder's licence that the licence holder:

- (a) permit entry by any person authorised in writing by the EPA to land owned or occupied by the licence holder, and
- (b) provide such reasonable assistance and facilities as may be required by the person,

for the purposes of, or in connection with, the operation of the Upper Hunter monitoring program.

79K EPA to publish results of air quality monitoring in Upper Hunter

The EPA is to make the results of the air quality monitoring carried out under the Upper Hunter monitoring program available on its website.

79L EPA to report on Upper Hunter monitoring program

- (1) The EPA is to prepare a report each year that contains an analysis of the results of the air quality monitoring carried out under the Upper Hunter monitoring program for the year concerned.
- (2) The EPA is also to prepare a report by 1 February 2017, and by 1 February in every fifth year thereafter, that contains the

2013 No 51

Protection of the Environment Operations (General) Amendment (Upper Hunter Air Quality Monitoring Network) Regulation 2013

Schedule 1

Amendment of Protection of the Environment Operations (General) Regulation 2009

following matters in relation to the Upper Hunter monitoring program:

- (a) a review of the effectiveness of the Upper Hunter monitoring program in fulfilling its objectives,
 - (b) the results of an independent audit (to be arranged by the EPA) of the efficiency and cost effectiveness of the Upper Hunter monitoring program,
 - (c) any recommendations for improvements to the Upper Hunter monitoring program,
 - (d) any other matters that the EPA considers appropriate or that an advisory committee established to advise the EPA in relation to the program considers appropriate.
- (3) The reports prepared under this clause are to be made available on the EPA's website.