



New South Wales

# Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2014

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*.

ROB STOKES, MP  
Minister for the Environment

## Explanatory note

The object of this Regulation is to amend the *Protection of the Environment Operations (General) Regulation 2009* to:

- (a) adjust the method of calculating the administrative fee for a licence holder to reflect the licence holder's performance in managing environmental risks, and
- (b) enable the Environment Protection Authority to issue a protocol for assessing a licence holder's performance in managing environmental risks, and
- (c) require a licence holder to pay an administrative fee within 90 days (rather than 60 days) after the beginning of a licence fee period, and
- (d) enable the Environment Protection Authority to consider any information available to it for the purpose of determining the amount of a load-based fee for a licence holder if insufficient information is provided for that purpose within 60 days (rather than 150 days) after the end of the relevant licence fee period, and
- (e) increase the amounts for an administrative fee unit and pollutant fee unit for the purposes of Part 1 of Chapter 2 of the Regulation, and
- (f) increase the fees payable for clean-up notices, prevention notices and noise control notices.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 53 (2) (c), 57 (1), 94 (2), 100 (2), 267A (2) and 323 (the general regulation-making power) and Schedule 2.

## **Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2014**

under the

Protection of the Environment Operations Act 1997

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2014*.

### **2 Commencement**

- (1) Except as provided by subclauses (2) and (3), this Regulation commences on 1 July 2014 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [1] and [4] commence on 1 July 2015.
- (3) Schedule 1 [2], [5], [6] and [9] commence on 1 July 2016.

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

### **[1]    Clause 4 Definitions**

Insert in alphabetical order in clause 4:

*environmental management calculation protocol*—see clause 10A.

### **[2]    Clause 7 Annual licence fee**

Omit “60” from the note to clause 7. Insert instead “90”.

### **[3]    Clause 9 Amount of administrative fee unit**

Omit clause 9 (1) (e). Insert instead:

- (e) on or after 1 July 2012 and before 1 July 2014—\$113,
- (f) on or after 1 July 2014 and before 1 July 2015—\$119,
- (g) on or after 1 July 2015 and before 1 July 2016—\$122,
- (h) on or after 1 July 2016 and before 1 July 2017—\$125,
- (i) on or after 1 July 2017 and before 1 July 2018—\$129,
- (j) on or after 1 July 2018—\$133.

### **[4]    Clause 10**

Omit the clause. Insert instead:

#### **10    Calculating amount of administrative fee**

- (1) The steps to determine the administrative fee comprised in an annual licence fee are as follows:

##### **Step 1 (Calculation of administrative fee units)**

Multiply the amount of one administrative fee unit for the relevant licence fee period by:

- (a) the number of administrative fee units specified in Schedule 1 for the activity authorised or controlled by the licence, or
- (b) if the licence authorises or controls more than one activity, the greatest number of administrative fee units specified in Schedule 1 for any one of those activities.

##### **Step 2 (Determination of environmental management category)**

Determine the environmental management category for the licence holder in accordance with the environmental management calculation protocol.

##### **Step 3 (Calculation of administrative fee)**

Multiply the amount calculated in accordance with step 1 by the environmental management factor specified in Column 2 of the Table to this clause for the applicable environmental management category specified in Column 1 of that Table.

- (2) Steps 2 and 3 do not apply for the purpose of:
- (a) calculating the administrative fee for a licence fee period that commences before 1 July 2016, or
  - (b) calculating the administrative fee for a licence relating to an activity that is declared by clause 48 of Schedule 1 to the Act to be a scheduled activity, or

- (c) calculating the administrative fee that is to accompany an application for a licence relating to premises, if the applicant has not previously held a licence relating to those premises.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Environmental management category</b>	<b>Environmental management factor</b>
A	0.95
B	1.0
C	1.3
D	1.6
E	2.0

**10A Environmental management calculation protocol**

- (1) For the purpose of this Division, the EPA is to issue (and may from time to time vary) a protocol to be applied in the determination of environmental management categories for licence holders (an *environmental management calculation protocol*) by notice published in the Gazette.
- (2) An environmental management calculation protocol is to provide for the determination of environmental management categories by reference to such matters relating to the licence holder's performance in managing environmental risks as may be specified in the protocol.
- (3) An environmental management calculation protocol takes effect from the date specified in the protocol and from that date any previous protocol ceases to have effect.
- (4) Any environmental management calculation protocol in force under this clause must be made available on the EPA's website.

**10B Determination of environmental management category—insufficient information provided**

- (1) If insufficient information is given to the EPA by a licence holder for the EPA to determine the correct environmental management category for the licence holder within 60 days after the beginning of the relevant licence fee period, the EPA may determine the environmental management category (and the resulting amount of the administrative fee) having regard to such information, if any, as is available to it.  
**Note.** A licence holder is required to report this information to the EPA in the annual return, required to be furnished as a condition of the licence, in relation to the licence holder's performance in managing environmental risks during a licence fee period.
- (2) The amount of the administrative fee so determined is taken to be the correct fee amount unless the contrary is established by the person who is liable to pay the fee in any proceedings for the recovery of the fee or other proceedings relating to the fee.

**[5] Clause 10C**

Insert after clause 10B:

**10C Change in environmental management category—adjustment of administrative fee**

- (1) This clause applies if, at any time during a licence fee period, the EPA receives from the licence holder information that would have resulted in the determination of a different environmental management category for the licence holder had the information been received before the determination was made.
- (2) The EPA may redetermine the environmental management category for the licence holder on the basis of the information provided.
- (3) The administrative fee for the licence fee period is to be adjusted according to the redetermined environmental management category.
- (4) Any additional amount of any fee adjusted under this clause is to be paid by the licence holder to the EPA not later than 60 days after the redetermined environmental management category is notified to the licence holder.
- (5) The provisions of Division 5 relating to the payment of interest on unpaid administrative fees apply to any additional amount of any fee adjusted under this clause.

**[6] Clause 12 Refunds and waivers—licence holders**

Insert after clause 12 (1) (b):

- (b1) refund the difference between the administrative fee paid and any lesser amount payable as a result of an adjustment under clause 10C,

**[7] Clause 19 Calculating the fee for each assessable pollutant—Step 4 of load-based fee calculation**

Omit clause 19 (7) (e). Insert instead:

- (e) on or after 1 July 2012 and before 1 July 2014—\$42.62,
- (f) on or after 1 July 2014 and before 1 July 2015—\$44.78,
- (g) on or after 1 July 2015 and before 1 July 2016—\$45.90,
- (h) on or after 1 July 2016 and before 1 July 2017—\$47.05,
- (i) on or after 1 July 2017 and before 1 July 2018—\$48.23,
- (j) on or after 1 July 2018—\$49.44.

**[8] Clause 22 Determination of load-based fee—insufficient information provided**

Omit “final date for payment of the fee” from clause 22 (1).

Insert instead “end of the relevant licence fee period”.

**[9] Clause 36 Administrative fee**

Omit “60” from clause 36 (1). Insert instead “90”.

**[10] Clause 99 Fee for clean-up, prevention and noise control notices**

Omit clause 99 (e). Insert instead:

- (e) on or after 1 July 2012 and before 1 July 2014—\$466,
- (f) on or after 1 July 2014 and before 1 July 2015—\$492,

- (g) on or after 1 July 2015 and before 1 July 2016—\$506,
- (h) on or after 1 July 2016 and before 1 July 2017—\$520,
- (i) on or after 1 July 2017 and before 1 July 2018—\$535,
- (j) on or after 1 July 2018—\$550.