



New South Wales

Protection of the Environment Operations (General) Amendment (PFAS Firefighting Foam) Regulation 2021

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*.

MATT KEAN, MP
Minister for Energy and Environment

Explanatory note

The objects of this Regulation are to—

- (a) prevent pollution caused by certain types of PFAS firefighting foam by—
 - (i) making it an offence to discharge the PFAS firefighting foam for the purposes of firefighting training or demonstration, and
 - (ii) from 26 September 2022, making it an offence to discharge the PFAS firefighting foam unless the foam is discharged by—
 - (A) particular persons to prevent, extinguish, or attempt to extinguish a fire that, in the opinion of the person, is a catastrophic fire or has the potential to be a catastrophic fire, or
 - (B) a person to prevent, extinguish, or attempt to extinguish a fire on a watercraft in State waters or prescribed waters, and
 - (iii) from 26 September 2022, making it an offence to sell a portable fire extinguisher containing the precursor to the PFAS firefighting foam, except if the extinguisher is sold to particular persons, the owner or master of a watercraft or a person granted an exemption by the Environment Protection Authority to discharge the firefighting foam from a portable fire extinguisher, and
- (b) enable the Environment Protection Authority to exempt a person or class of persons from offences in relation to the prevention of pollution caused by certain types of PFAS firefighting foam, and
- (c) declare the Environment Protection Authority is the appropriate regulatory authority for a matter relating to the prevention of pollution caused by certain types of PFAS firefighting foam.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 6(3), 286(1) and 323 (the general regulation-making power) and Schedule 2, clause 15(1).

Protection of the Environment Operations (General) Amendment (PFAS Firefighting Foam) Regulation 2021

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (PFAS Firefighting Foam) Regulation 2021*.

2 Commencement

This Regulation commences on the day that is one month after the day on which it is published on the NSW legislation website.

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

[1] Clause 93A

Insert after clause 93—

93A Discharge of PFAS firefighting foam

The EPA is declared, under section 6(3) of the Act, to be the appropriate regulatory authority for a matter arising under Chapter 7, Part 3B of this Regulation.

[2] Clause 95B

Insert after clause 95A—

95B PFAS firefighting foam pollution prevention measures—exemptions granted by EPA

- (1) For the purposes of section 286(1) of the Act, the EPA may, by order published in the Gazette, exempt a person or class of persons from a provision of Chapter 7, Part 3B of this Regulation.
- (2) An exemption given under this clause is subject to the conditions, if any, specified in the order.

[3] Chapter 7, Part 3B

Insert after Part 3A—

Part 3B PFAS firefighting foam—pollution prevention measures—Schedule 2, clause 15(1) of the Act

98G Definitions

In this Part—

catastrophic fire means a fire involving a combustible accelerant, including petrol, kerosene, oil, tar, paint or polar solvents including ethanol.

community fire unit has the same meaning as in the *Fire and Rescue NSW Act 1989*.

fire brigade has the same meaning as in the *Fire and Rescue NSW Act 1989*.

long-chain PFAS means—

- (a) **PFCAs (perfluoroalkyl carboxylic acids)** with 7 or more perfluoroalkyl carbons, or
- (b) **PFSAs (perfluoroalkyl sulfonic acids)** with 6 or more perfluoroalkyl carbons, or
- (c) substances that have the potential to degrade to a substance specified in paragraph (a) or (b).

PFAS firefighting foam means—

- (a) prescribed long-chain PFAS firefighting foam, or
- (b) firefighting foam containing PFAS, other than—
 - (i) prescribed long-chain PFAS firefighting foam, or
 - (ii) firefighting foam containing long-chain PFAS.

PFAS (per- and poly-fluoroalkyl substances) means substances that contain, within their molecular structure, a straight or branching chain of carbon atoms in which one or more of the carbon atoms have fluorine atoms attached at all bonding sites not occupied by another carbon atom.

Port Authority of New South Wales means the Newcastle Port Corporation established under the *Ports and Maritime Administration Act 1995*.

portable fire extinguisher means a fire extinguisher with capacity to hold no more than 23 kilograms of the precursor to firefighting foam.

prescribed long-chain PFAS firefighting foam means firefighting foam that, when the precursor to the foam is tested as a concentrate, contains an amount of long-chain PFAS equal to or more than—

- (a) if the perfluorinated part of the carbon chain is 7 or more carbon atoms—50 mg per kilogram of total impurities in the foam, or
- (b) if the foam contains perfluorooctane sulfonate and perfluorohexane sulfonate—10 mg per kilogram of total impurities in the foam.

relevant authority means—

- (a) Transport for NSW, or
- (b) a fire brigade, or
- (c) a rural fire brigade, or
- (d) a community fire unit, or
- (e) the Port Authority of New South Wales.

rural fire brigade has the same meaning as in the *Rural Fires Act 1997*.

watercraft has the same meaning as *vessel* in section 5 of the *Marine Safety Act 1998*.

98H Discharge of PFAS firefighting foam in training

A person must not discharge PFAS firefighting foam for the purposes of firefighting training or a firefighting demonstration.

Maximum penalty—

- (a) for a corporation—400 penalty units, or
- (b) for an individual—200 penalty units.

Note. See sections 120 and 142A of the Act for offences relating to pollution of waters and pollution of land, including by PFAS firefighting foam.

98I Discharge of PFAS firefighting foam

- (1) This clause applies on and from 26 September 2022 in relation to the discharge of—
 - (a) prescribed long-chain PFAS firefighting foam, or
 - (b) PFAS firefighting foam from a portable fire extinguisher.
- (2) A person must not discharge PFAS firefighting foam to which this clause applies unless the foam is discharged by—
 - (a) a relevant authority to prevent, extinguish, or attempt to extinguish a fire that, in the opinion of the relevant authority—
 - (i) is a catastrophic fire, or
 - (ii) has the potential to be a catastrophic fire, or
 - (b) a person to prevent, extinguish, or attempt to extinguish a fire on a watercraft in relevant waters.

Maximum penalty—

- (a) for a corporation—400 penalty units, or
- (b) for an individual—200 penalty units.

Example. Prescribed long-chain PFAS firefighting foam discharged to prevent a combustible accelerant from catching alight.

- (3) In this clause—

relevant waters means—

- (a) State waters, within the meaning of the *Marine Pollution Act 2012*, or
- (b) prescribed waters, within the meaning of the *Fire and Rescue NSW Act 1989*.

Note. See sections 120 and 142A of the Act for offences relating to pollution of waters and pollution of land, including by PFAS firefighting foam.

98J Sale of portable fire extinguishers containing precursor to PFAS firefighting foam

- (1) This clause applies on and from 26 September 2022.
- (2) A person must not sell a portable fire extinguisher containing the precursor to PFAS firefighting foam.
Maximum penalty—
 - (a) for a corporation—400 penalty units, or
 - (b) for an individual—200 penalty units.
- (3) A person does not commit an offence under subclause (2) if the person reasonably believes they are selling a portable fire extinguisher containing PFAS firefighting foam to—
 - (a) a relevant authority, or
 - (b) in relation to a watercraft—the owner or master of a vessel, within the meaning of the *Marine Safety Act 1998*, or
 - (c) an exempt person.

Note. See also clause 95B.

- (4) In this clause—

exempt person means a person granted an exemption by the EPA under clause 95B from clause 98I(2) in relation to the discharge of PFAS firefighting foam from a portable fire extinguisher.

[4] Schedule 6 Penalty notice offences

Insert in appropriate order in the matter relating to the *Protection of the Environment Operations (General) Regulation 2009*—

Clause 98H	3	\$100	\$200
Clause 98I(2)	3	\$100	\$200
Clause 98J(2)	3	\$100	\$200