

Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008

[2008-81]



New South Wales

Status Information

Currency of version

Historical version for 28 March 2008 to 28 May 2009 (accessed 23 November 2024 at 17:50)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Authorisation

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File last modified 1 June 2008

Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008



New South Wales

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Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008



New South Wales

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*.

VERITY FIRTH, M.P., Minister for Climate Change and the Environment

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008*.

2 Commencement

- (1) This Regulation commences on 1 June 2008, except as provided by subclause (2).
- (2) Schedule 1.1 [2] and Schedule 1.2 [2] commence on 1 June 2012.

3 Definitions

- (1) In this Regulation:

commission, in relation to a storage system or groundwater monitoring well, means to bring the system or well into use for the first time following its installation, modification or repair.

current “as-built” drawings, in relation to a storage system, means drawings that depict the current configuration of the system in relation to the storage site.

decommission, in relation to a storage system, means to permanently abandon the use of the system or to render the system permanently unusable.

Note—

Other legislation may require the cessation of the use of certain storage systems, for example a system to

which clause 174ZF of the *Occupational Health and Safety Regulation 2001* applies.

duly qualified person, in relation to any activity, means a person who has such competence and experience in relation to that activity as is recognised in the relevant industry as appropriate for that activity.

environment protection plan means an environment protection plan referred to in clause 19 (1).

EPA Gazettal notice means a notice published in the Gazette by the EPA.

EPA guideline means a guideline in force under clause 30.

incident management procedure means a procedure referred to in clause 19 (2) (b).

installation of a storage system means the original installation of the system on the storage site, and includes any work in the vicinity of the storage site necessary for the installation, and anything done to the system before it is commissioned.

loss monitoring procedure means a procedure referred to in clause 19 (2) (a).

mandatory pollution protection equipment means the following:

- (a) non-corrodible secondary containment tanks and associated pipework,
- (b) overfill protection devices.

modification of a storage system includes any upgrade, extension, alteration or replacement of the system, or any component of the system, but does not include:

- (a) anything done to the system before it is first commissioned, or
- (b) anything done to the system after it is decommissioned, or
- (c) anything done to the system as part of routine maintenance, or
- (d) anything done to the system before 1 June 2008, or
- (e) anything done to a storage site, or any building on a storage site, that does not directly affect the system.

modified storage system means a storage system that has been modified since 1 June 2008.

new storage system means any storage system that is not an old storage system.

old storage system means any storage system:

- (a) for which development consent had been obtained under the *Environmental*

Planning and Assessment Act 1979 before 1 June 2008, or

- (b) for which installation had lawfully commenced before 1 June 2008, or
- (c) that had been commissioned before 1 June 2008.

person responsible, in relation to a storage system, means:

- (a) except as provided by paragraph (b), the person who has the management and control of the system, or
- (b) if the system has been decommissioned, the person who had the management and control of the system immediately before the system was decommissioned.

petroleum means any fuel that consists predominantly of a mixture of hydrocarbons derived from crude oil, whether or not the fuel includes additives (such as ethanol), and includes used oil.

routine maintenance, in relation to a storage system, includes any repairs to the system that are done in the course of routine maintenance.

significant modification, in relation to a storage system, means any modification to the system that involves more than:

- (a) replacement of pipework in the system, or
- (b) replacement of less than half of the tanks in the system, or
- (c) work for which development consent is not required under the *Environmental Planning and Assessment Act 1979*.

storage site, in relation to a storage system, means the premises in or on which the system is situated.

storage system means a system of tanks, pipes, valves and other equipment that is designed:

- (a) to contain petroleum, or
 - (b) to control the passage of petroleum into, out of, through or within the system,
- and includes any structure through which petroleum routinely passes from one part of the system to another.

the Act means the *Protection of the Environment Operations Act 1997*.

use, in relation to a storage system, includes to allow petroleum to remain in the system.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 Application of Regulation

This Regulation applies to all storage systems other than the following:

- (a) a storage system whose tanks are situated wholly above ground, together with any associated pipes, valves and other equipment (whether situated above or below ground),
- (b) a sump, separator, stormwater or wastewater collection system, catchment basin, pit, septic tank or other like structure (unless petroleum routinely passes through the structure from one part of a storage system to another),
- (c) a bunded tank situated below ground level but not in the ground (such as in a basement, cellar or tunnel),
- (d) a liquefied petroleum gas storage system,
- (e) a storage system that is a scheduled activity (that is, an activity listed in Schedule 1 to the Act) and for which a licence under the Act is in force.

Part 2 Commissioning and decommissioning of storage systems

Division 1 Installation of new storage systems

5 New system not to be commissioned unless properly designed

A new storage system must not be commissioned unless:

- (a) it has been designed by a duly qualified person, and
- (b) the person by whom it has been designed has provided the person responsible for the system with:
 - (i) a list of the industry standards that have been followed in connection with the design of the system, and
 - (ii) a copy of the design specifications for the system.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

6 New system not to be commissioned unless properly installed

A new storage system must not be commissioned unless:

- (a) it has been installed by a duly qualified person, and
- (b) the person by whom it has been installed has provided the person responsible for the system with:

- (i) a list of the industry standards that have been followed in connection with the installation of the system, and
- (ii) a copy of the installation specifications for the system, and
- (iii) current “as-built” drawings for the system.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

7 New system not to be commissioned unless properly equipped

A new storage system must not be commissioned unless:

- (a) the system includes the mandatory pollution protection equipment, and
- (b) groundwater monitoring wells are installed on the storage site in accordance with Part 3.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

8 Equipment integrity test to be performed

(1) A new storage system must not be commissioned unless:

- (a) an equipment integrity test of the system has been carried out in accordance with the written directions of a duly qualified person, and
- (b) the system has been certified, by the person by whom the test was carried out, as having satisfied the test.

(2) A certificate issued for the purposes of subclause (1) (b) must be accompanied by the results of the test referred to in that paragraph.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

Division 2 Modification of storage systems

9 Modified system not to be commissioned unless properly designed

A modified storage system must not be commissioned unless:

- (a) the modification has been designed by a duly qualified person, and
- (b) the person by whom the modification has been designed has provided the person responsible for the system with:
 - (i) a list of the industry standards that have been followed in connection with the

design of the modification, and

- (ii) a copy of the design specifications for the modification.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

10 Modified system not to be commissioned unless properly installed

A modified storage system must not be commissioned unless:

- (a) the modification has been implemented by a duly qualified person, and
- (b) the person by whom the modification has been implemented has provided the person responsible for the system with:
 - (i) a list of the industry standards that have been followed in connection with the implementation of the modification, and
 - (ii) a copy of the implementation specifications for the modification, and
 - (iii) current “as-built” drawings for the system.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

11 Modified system not to be commissioned unless properly equipped

(1) A modified storage system must not be commissioned unless:

- (a) the system includes the mandatory pollution protection equipment, and
 - (b) groundwater monitoring wells are installed on the storage site in accordance with Part 3.
- (2) Subclause (1) (a) does not require an old storage system to include the mandatory pollution equipment unless the modification is a significant modification.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

12 Equipment integrity test to be performed

(1) A modified storage system must not be commissioned unless:

- (a) an equipment integrity test of the system has been carried out in accordance with the written directions of a duly qualified person, and
- (b) the system has been certified, by the person by whom the test was carried out, as having satisfied the test.

- (2) A certificate issued for the purposes of subclause (1) (b) must be accompanied by the results of the test referred to in that paragraph.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

13 Validation report to be prepared after tank removed or replaced

- (1) If the modification involves the removal or replacement of any tank, a modified storage system must not be commissioned unless a validation report for the storage site has been served on the relevant local authority:
 - (a) except as provided by paragraph (b), no later than 60 days after the tank is removed or replaced, or
 - (b) if remediation of the site is required, no later than 60 days after the remediation is completed.
- (2) A validation report referred to in subclause (1) must be prepared in accordance with EPA guidelines.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

Division 3 Repair of storage systems

14 Equipment integrity test to be performed

- (1) A storage system that has been repaired following the discovery of a leak in the system must not be commissioned unless:
 - (a) an equipment integrity test of the system has been carried out in accordance with the written directions of a duly qualified person, and
 - (b) the system has been certified, by the person by whom the test was carried out, as having satisfied the test.
- (2) A certificate issued for the purposes of subclause (1) (b) must be accompanied by the results of the test referred to in that paragraph.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

Division 4 Decommissioning of storage systems

15 Validation report to be prepared after system decommissioned

- (1) If a storage system is decommissioned, a validation report for the storage site must be served on the relevant local authority:

- (a) except as provided by paragraph (b), no later than 60 days after the system is decommissioned, or
 - (b) if remediation of the site is required, no later than 60 days after the remediation is completed.
- (2) A validation report referred to in subclause (1) must be prepared in accordance with EPA guidelines.
 - (3) This clause does not apply to any decommissioning of a storage system that took place before 1 June 2008.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

Part 3 Groundwater monitoring wells

16 Storage system to have groundwater monitoring wells

- (1) A storage system must not be used unless groundwater monitoring wells are installed on the storage site.
- (2) The number and location of groundwater monitoring wells to be installed on a storage site is to be determined by a duly qualified person with a view to maximising the likelihood that the wells will intercept contaminated groundwater, whatever the groundwater flow conditions.
- (3) This clause does not apply to an old storage system until 1 June 2011.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

17 Groundwater monitoring well not to be installed unless properly designed

A groundwater monitoring well must not be installed on a storage site unless:

- (a) it has been designed by a duly qualified person, and
- (b) the person by whom it has been designed has provided the person responsible for the relevant storage system with a list of the industry standards that have been followed in connection with the design of the well.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

18 Storage system not to be used unless groundwater monitoring wells properly installed

- (1) A storage system located on a storage site on which a groundwater monitoring well has been installed must not be used unless:

- (a) the well has been installed by a duly qualified person, and
- (b) the well has been sealed to exclude surface water, and
- (c) the well is clearly marked to indicate its presence and is properly secured, and
- (d) the person by whom it has been installed has provided the person responsible for the relevant storage system with:
 - (i) a list of the industry standards that have been followed in connection with the installation of the well, and
 - (ii) a groundwater monitoring well report prepared in relation to the well.

(2) A groundwater monitoring well report referred to in subclause (1) (d) (ii) must be prepared in accordance with EPA guidelines.

(3) This clause does not apply to an old storage system until 1 June 2011.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

Part 4 Use of storage systems

19 Storage system not to be used unless environment protection plan in place

- (1) A storage system must not be used otherwise than in accordance with an environment protection plan that is in place in relation to the system.
- (2) A storage system's environment protection plan must include:
 - (a) a loss monitoring procedure, and
 - (b) an incident management procedure, and
 - (c) a maintenance schedule,
 - (d) the current "as-built" drawings for the system,
 - (e) a plan of the storage site that includes the locations of each of the following:
 - (i) the storage system,
 - (ii) all buildings and associated infrastructure,
 - (iii) all fences and gates,
 - (iv) all groundwater monitoring wells (including any codes or symbols by which they are designated),
 - (v) any unsealed ground surfaces.

- (f) a copy of each list of industry standards referred to in clause 5 (b) (i), 6 (b) (i), 9 (b) (i), 10 (b) (i), 17 (b) and 18 (1) (d),
 - (g) a copy of all specifications referred to in clause 5 (b) (ii), 6 (b) (ii), 9 (b) (ii) and 10 (b) (ii),
 - (h) the information required by subclause (3).
- (3) The information to be included in the environmental protection plan for a storage system is as follows:
- (a) the name of the person responsible for the system and an address for service and a 24 hour contact phone number for that person,
 - (b) if the person responsible for the system is a corporation:
 - (i) the name of a natural person who is authorised to act on behalf of the corporation in relation to the control of the system, and
 - (ii) a 24 hour contact phone number for that person,
 - (c) the street address of the storage site,
 - (d) the land title particulars (such as the Lot and DP numbers) of the land on which the system is situated,
 - (e) if the person responsible for the system is not the owner of the storage site, the name of the owner,
 - (f) details of access to, and the security of, the system, including details of any locks, gates, fences and the like and the means of opening them,
 - (g) the location of all records kept in accordance with Part 5.
- (4) A storage system's loss monitoring procedure (referred to in subclause (2) (a)) must be designed to measure discrepancies between:
- (a) the amount of petroleum that should be present in the system, and
 - (b) the amount of petroleum that is actually present in the system,
- so as to be capable of detecting losses of petroleum occurring at a rate of 0.76 litres per hour or more with at least 95% accuracy.
- (5) A storage system's incident management procedure (referred to in subclause (2) (b)) must set out the procedures to be followed in dealing with any leaks and spills of petroleum from the system.
- (6) A storage system's maintenance schedule (referred to in subclause (2) (c)) must include details of what maintenance is proposed to be carried out, and when, in

relation to the system generally and in relation to the various gauges, indicators, groundwater monitoring wells and other measuring instruments in the system.

- (7) The absence, in relation to a storage system, of a list of industry standards or a copy of a specification (referred to in subclause (2) (f) and (g)) does not give rise to an offence if:
- (a) the person responsible for the system was not in possession of such a list or copy as at 1 June 2008, and
 - (b) the person responsible for the system is still not in possession of such a list or copy, and
 - (c) there is documentary evidence that the person responsible for the system has taken all reasonable steps to obtain such a list or copy.
- (8) A storage system's environment protection plan:
- (a) must comply with EPA guidelines, and
 - (b) must be updated as occasion requires, and
 - (c) must be kept on the storage site.
- (9) This clause does not apply to an old storage system until 1 June 2009.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

20 Storage system not to be used unless measuring instruments checked and data recorded

A storage system must not be used unless:

- (a) all gauges, indicators, groundwater monitoring wells and other measuring instruments in the system have been checked and maintained:
 - (i) in accordance with the manufacturers' instructions, or
 - (ii) if there are no such instructions, in accordance with the environment protection plan for the system, and
- (b) all data produced by such measuring instruments has been recorded.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

21 Groundwater monitoring

- (1) A storage system must not be used unless:

- (a) the groundwater in each groundwater monitoring well on the storage site has been tested for contamination by petroleum, during the last 6 months, in accordance with the written instructions of a duly qualified person, and
- (b) the groundwater in each groundwater monitoring well on the storage site has been sampled and analysed, within 30 days after the occurrence of any of the following, in accordance with the written instructions of a duly qualified person:
 - (i) the installation of a new groundwater monitoring well on the storage site,
 - (ii) the discovery, whether by means of a test referred to in paragraph (a) or otherwise, that groundwater may be contaminated by petroleum originating from the storage site,
 - (iii) the discovery, whether pursuant to the loss monitoring procedure for the system or otherwise, that the system has a leak.

(2) This clause applies to an old storage system on and from 1 June 2011.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

22 Loss detection procedures

- (1) As soon as practicable after becoming aware of any discrepancy detected by the loss monitoring procedure for a storage system, action must be taken:
 - (a) to investigate the discrepancy, and
 - (b) if the discrepancy cannot be attributed to anything other than a leak, to confirm the existence of a leak, and
 - (c) if the existence of a leak is confirmed, to identify the source of the leak and to fix the leak.
- (2) Details of any action taken under this clause must be recorded.

Maximum penalty: 200 penalty units (in the case of an individual) and 400 penalty units (in the case of a corporation).

Part 5 Record-keeping

23 Record of significant modifications

If a significant modification is made to a storage system:

- (a) the following information must be recorded:
 - (i) a comprehensive description of the modification,

- (ii) the dates of commencement and completion of the modification,
 - (iii) the results of the equipment integrity test carried out under clause 12, and
- (b) the current “as-built” drawings for the system must be revised to reflect the modification.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

24 Incident log

- (1) An incident log for a storage system must be kept on the storage site or, if another location is so specified in the system’s environment protection plan, in that location.
- (2) The following activities and incidents are to be recorded in the incident log of a storage system:
 - (a) the carrying out of any activity, by a person acting otherwise than at the direction or request of the person responsible for the system, that has affected, is affecting or could affect the integrity of the system, and
 - (b) the occurrence of any unplanned or abnormal incident (including operational disruptions or equipment failures) that has affected, is affecting or could affect the long-term safety of the system.
- (3) A notification under Part 5.7 of the Act of a pollution incident involving a storage system is to be made in a form approved by the EPA.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

25 Documents to be kept for 7 years from date of creation

- (1) For the purposes of this clause, **required document** means any of the following:
 - (a) any validation report prepared for the system under clause 13,
 - (b) any document containing the data produced by any measuring instrument referred to in clause 20,
 - (c) any document containing details of any action taken under clause 22,
 - (d) any notification that is given to the appropriate regulatory authority of a pollution incident involving a storage system.
- (2) Each required document for a storage system, including any document delivered in accordance with clause 27, must be kept for at least 7 years from the day on which it was created.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

26 Documents to be kept for 7 years from date of decommissioning

- (1) For the purposes of this clause, **required document**, in relation to a storage system, means any of the following:
 - (a) each certificate issued for the system under clause 8, 12 or 14,
 - (b) any validation report prepared for the system under clause 15,
 - (c) a groundwater monitoring well report referred to in clause 18,
 - (d) each version of the environment protection plan prepared for the system under clause 19,
 - (e) any record made in relation to the system under clause 23.
 - (f) the incident log kept for the system under clause 24,
 - (g) any report that has been made as a consequence of action taken under Part 5.7 of the Act in connection with a pollution incident involving the system.
- (2) Each required document for a storage system, including any document delivered in accordance with clause 27, must be kept for at least 7 years from the day on which the system is decommissioned.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

27 Delivery of records on change of responsibility

Within 30 days after there is a change in responsibility for a storage system, the person formerly responsible for the system must deliver all documents for the system that this Part requires to be kept and that are in his or her possession to the person newly responsible for the system.

Maximum penalty: 100 penalty units (in the case of an individual) and 200 penalty units (in the case of a corporation).

Part 6 Miscellaneous

28 Exemptions

- (1) The EPA may, by order in writing, exempt a person or a class of persons specified in the order from any provision of this Regulation specified in the order to the extent that the provision applies to the person or class in respect of any storage system specified in the order.

- (2) The EPA may grant an exemption on application or of its own motion.
- (3) An application for an exemption must be accompanied by such fee (if any) as the EPA may determine.
- (4) An order under this clause:
 - (a) has effect in such circumstances (if any), and subject to such conditions (if any), as are specified in the order, and
 - (b) must specify a person to be served with the order and must be served on that person, and
 - (c) has effect on and from service of the order or such later date as may be specified in the order, and
 - (d) is subject to the condition that the exempted person complies with all of the provisions of the Act and the other provisions of this Regulation that apply to the person, and
 - (e) may be revoked by the EPA at any time by order in writing published in the Gazette or served on the person referred to in paragraph (b).

29 Offences

- (1) Responsibility for compliance with the provisions of this Regulation in relation to a storage system lies with the person responsible for the system.
- (2) The person responsible for a storage system is guilty of an offence if in relation to the system:
 - (a) the person contravenes a provision of this Regulation for which a penalty is provided, or
 - (b) the person authorises or permits such a contravention.

30 EPA guidelines

- (1) The EPA may, by means of an EPA Gazettal notice, issue guidelines for the purposes of this Regulation and may, by means of a further EPA Gazettal notice, vary or revoke any such guideline.
- (2) The following documents are taken, on the commencement of this clause, to be such guidelines and may be varied or revoked accordingly:
 - (a) the document entitled *Minimum Construction Requirements for Water Bores in Australia: Edition 2*, published by the Land and Water Biodiversity Committee,
 - (b) that part of the document entitled *Guidelines for Consultants Reporting on*

Contaminated Sites, EPA 97/104, published by the EPA, as comprises sections 2.4 and 3.1.

31 Amendment of other Regulations

The Regulations specified in Schedule 1 are amended as set out in that Schedule.

Schedule 1 Amendment of other Regulations

(Clause 31)

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

[1] Clause 67A

Insert after clause 67:

67A Underground petroleum storage systems

The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for any matter arising under the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008*.

[2] Clause 67A

Omit the clause.

1.2 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 2004

[1] Schedule 1 Penalty notice offences

Insert after the matter relating to the *Protection of the Environment Operations (Noise Control) Regulation 2000*:

Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)
Clause 5	2	\$500	\$1,000
Clause 6	2	\$500	\$1,000
Clause 7	2	\$500	\$1,000

Clause 8	2	\$500	\$1,000
Clause 9	2	\$500	\$1,000
Clause 10	2	\$500	\$1,000
Clause 11	2	\$500	\$1,000
Clause 12	2	\$500	\$1,000
Clause 13	1, 2	\$250	\$500
Clause 14	2	\$500	\$1,000
Clause 15	1, 2	\$250	\$500
Clause 16	2	\$500	\$1,000
Clause 17	2	\$500	\$1,000
Clause 18	2	\$500	\$1,000
Clause 19	2	\$500	\$1,000
Clause 20	2	\$250	\$500
Clause 21	2	\$500	\$1,000
Clause 22	2	\$500	\$1,000
Clause 23	2	\$250	\$500
Clause 24	2	\$250	\$500
Clause 25	2	\$250	\$500
Clause 26	2	\$250	\$500
Clause 27	2	\$250	\$500

[2] Schedule 1

Insert “1,” before “2” wherever occurring in Column 2 of the matter relating to each of the clauses (other than clauses 13 and 15) of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008*.