

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002

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New South Wales

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Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002



New South Wales

Contents

Part 1 Preliminary	8
1 Name of Regulation	8
2 Commencement	8
3 Establishment of scheme and objects	8
4 Definitions	9
5 Participants in scheme	9
6 Discharge licence	9
7 Hunter River catchment	10
8 Notes	10
Part 2 General workings of scheme	10
Division 1 Classification of river flow	10
9 Division of Hunter River flow into blocks	10
10 Classification of river blocks	10
11 Flow ranges	11
12 Classification of block—upper sector	11
13 Classification of block—middle sector	12
14 Classification of block—lower sector	13
Division 2 River Register	13
15 River Register	13

16 Entry of information in River Register.....	14
Part 3 Discharge rules	14
Division 1 Preliminary	14
17 Salinity targets	14
18 Definitions	15
Division 2 Principal rules about discharges	15
19 No discharges except from authorised discharge point.....	15
20 No discharges except during site discharge period	15
21 Services Co-ordinator to determine site discharge period.....	15
22 Maximum discharge during site discharge period	16
Division 3 Volume discharge limit—high flow block	16
Note.....	16
23 High flow block—determination of volume discharge limit.....	16
24 Sector credit discount factor—high flow block.....	18
25 Total allowable discharge of salt.....	18
Division 4 Volume discharge limit—flood flow blocks	19
26 Flood flow block.....	19
Note.....	19
Division 5 Trading rules order	20
27 Imposition of trading rules by EPA.....	20
28 Effect of trading rules order.....	20
29 Effect of order—determination of volume discharge limit	20
30 Sector credit discount factor	22
31 Total allowable discharge of salt.....	22
Division 6 Other rules relating to discharges	23
32 Saline water to be discharged at a regular rate	23
33 Record keeping requirements.....	23
34 Reporting requirements.....	24
Division 7 Emergency dilution arrangements	24

35 Defence—emergency dilution arrangements	24
Part 4 Credits in scheme	25
Division 1 General	25
36 Creation of credits	25
37 Authority conferred by credit.....	25
38 Lifespan of credit.....	25
39 Who may hold credit	26
Division 2 Initial allocation of credits	26
40 First issue credits.....	26
41 Allocation of first issue credits to relevant licence holders	26
Division 3 Allocation of residual first issue credits	26
42 Residual first issue credits	26
43 Notice of intention to allocate residual first issue credits	27
44 Eligibility criteria.....	27
45 Number of credits to be allocated	28
Division 4 Creation and sale of new credits	29
46 New credits to be created every 2 years	29
47 Sale of new credits by auction.....	29
48 Sale of new credits by private treaty.....	29
49 Sale of residual first issue credits	29
Part 5 Trading in credits.....	30
Division 1 Trading in credits	30
50 Trading in credits	30
51 Trading facility to be established	30
52 Registration of credit traders.....	30
53 Use of credit trading facility	31
54 Transfers to be effected by registered traders by means of facility.....	31
55 Transfers may be made for consideration	31
Division 2 Trading rules	31

56 General rules as to transfers	31
57 To whom credits may be transferred	32
58 Retrospective transfers not permitted	32
59 Credits valid for single use only	32
60 Effect of sector credit discount factor on transfers	32
61 Offence for contravention of trading rules	33
62 Effect of contravention of trading rules on volume discharge limit	33
Division 3 Credit Register	33
63 Credit Register	33
64 Transfers to be entered in Register	34
65 Correction of Credit Register	34
Part 6 Administration of scheme	34
Division 1 Services Co-ordinator	34
66 Services Co-ordinator	34
67 Engagement of contractors to carry out functions	35
68 Functions of EPA	35
Division 2 Registrar	36
69 Registrar	36
Division 3 Operations Committee	36
70 Appointment of Operations Committee	36
71 Functions of Operations Committee	37
72 Failure by Operations Committee to perform functions	37
Part 7 Cost recovery	37
Division 1 Contribution payable by participants towards costs of scheme	37
73 Participants required to contribute toward costs of scheme	37
74 Calculation of contribution	38
75 Contribution on credit holdings	39
76 Contribution on licence	39

77 Contributions on forfeited credits	40
Division 2 Calculating total contributions amount	40
78 Total contributions amount	40
79 Costs of Services Co-ordinator	40
80 Costs of Registrar	41
81 Costs of EPA.....	41
Division 3 Adjustments to total cost.....	41
82 Functions of EPA	41
83 Reconciliation at end of scheme year.....	41
84 Auction and sale proceeds.....	42
85 Adjustments to contributions.....	42
Part 8 Enforcement	42
86 General enforcement power of EPA	42
87 Confirmation of enforcement order	43
88 Forfeiture of credits	43
89 Notice of reasons for making forfeiture order.....	45
90 Effect of forfeiture order	45
91 Offence of providing false information	45
Part 9 Miscellaneous	46
92 Suspension of scheme.....	46
93 Review of Regulation—timetable.....	46
94 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999.....	46
Part 10 Savings and transitional provisions	47
95 Regulation supersedes pilot scheme	47
96 Services Co-ordinator	47
97 First scheme year	47
98 Discharge licences issued under pilot scheme	47
Schedule 1 Allocation of first issue credits	47
Schedule 2 Constitution and procedure of Operations Committee	49

Dictionary 52

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002*.

2 Commencement

This Regulation commences on 1 December 2002.

3 Establishment of scheme and objects

- (1) There is established by this Regulation a tradeable emission scheme, to be known as the Hunter River Salinity Trading Scheme, to provide for the management of discharges of saline water into the Hunter River catchment.
- (2) The objects of the scheme are:
 - (a) to minimise the impact of discharges of saline water on irrigation, other water uses and on aquatic ecosystems in the Hunter River catchment:
 - (i) at the lowest overall cost to the community, and
 - (ii) in a way that provides ongoing financial incentives to reduce pollution, and
 - (b) to facilitate sustainable water management by industry in the Hunter River catchment.

Note—

Overview of scheme

Under the scheme provided for by this Regulation, discharges of saline water into the Hunter River catchment are permitted only during periods when the Hunter River is considered to be in high flow or flood flow, and only by persons who hold licences that authorise such discharges (discharge licences).

During high flow periods, a discharge licence holder will be entitled to discharge saline water only if the licence holder holds one or more credits in the scheme. During flood flow periods, the amount of saline water that may be discharged by a discharge licence holder is unlimited, subject to the salinity targets and any overriding limit that may be applied by the EPA as a condition of the licence. However, the EPA is authorised in certain circumstances to require discharges to be made in accordance with credit holdings, even during flood flow periods. The rules relating to discharges are set out in Parts 2 and 3.

Credits in the scheme are created by the EPA. Initially credits will be allocated to certain licence holders, most of whom were participants in the pilot scheme which has been conducted by the EPA, in conjunction with the Department of Land and Water Conservation, since 1995. Provision is also made for the allocation of credits to new entrants to the scheme. A credit will have a limited lifespan of not more than 10 years. The EPA will be able to create and sell new credits as existing credits expire. Provisions relating to the creation, allocation and sale of credits are set out in Part 4.

A credit entitles a person who holds a discharge licence to discharge 0.1% of the total allowable discharge of salt for the Hunter River catchment. The total allowable discharge is determined on a day-to-day basis, by reference to the salinity targets for the Hunter River catchment. The more credits the licence holder holds, the more saline water the licence holder is entitled to discharge. However, the timing of any discharge is subject to very specific rules.

A credit is transferable in accordance with this Regulation. Initially credits will be transferable only between persons who are allocated those credits by the EPA. However, after the first auction of credits is held, any person will be able to buy, hold and trade in credits. A credit does not confer any authority on the holder to discharge saline water unless the person also holds a licence that authorises such discharges. Provisions relating to trading of credits are set out in Part 5.

The remaining parts of this Regulation set out other provisions relating to the scheme, including administration, cost recovery and enforcement provisions.

4 Definitions

Expressions used in this Regulation have the meanings set out in the Dictionary at the end of this Regulation.

5 Participants in scheme

- (1) For the purposes of this Regulation, **participant** in the scheme has the meaning given by section 295A of the Act.
- (2) For the purposes of paragraph (b) of the definition of **participant** in that section, the scheme applies to discharge licences.

6 Discharge licence

For the purposes of this Regulation, a **discharge licence** means a licence that authorises the discharge of saline water into the Hunter River catchment from an authorised discharge point or points.

Note—

Licence is defined in the Act to mean an environment protection licence.

7 Hunter River catchment

For the purposes of this Regulation, the **Hunter River catchment** means the catchment of the Hunter River and its tributaries upstream of Singleton, excluding:

- (a) the Goulburn River upstream of Kerrabee, and
- (b) any tributary that drains into Lake St Clair, and
- (c) any tributary that drains into Lake Glenbawn.

8 Notes

Notes included in this Regulation do not form part of this Regulation.

Part 2 General workings of scheme

Division 1 Classification of river flow

9 Division of Hunter River flow into blocks

- (1) For the purposes of the scheme, the flow of the Hunter River is taken to be divided into notional blocks.
- (2) A block is a body of water that flows down the Hunter River and that is predicted to pass through the lower sector reference point in a 24-hour period (starting at midnight on one day and ending immediately before midnight on the following day).

Note—

Lower sector reference point is defined in the Dictionary.

- (3) Blocks are to be identified in the River Register by the Services Co-ordinator by means of a unique identification number.

Note—

There will be the same number of blocks as there are days in a year. Each block represents an opportunity for a discharge licence holder to discharge saline water, depending on its classification. This is explained further below.

10 Classification of river blocks

- (1) The Services Co-ordinator is to classify the rate of flow of each block of the Hunter River in accordance with this Part.
- (2) A block is to be classified, in relation to each sector that it passes through, as:
 - (a) low flow, or
 - (b) high flow, or
 - (c) flood flow.

- (3) The following reference points are to be used for the purpose of predicting the rate of flow of a block as it passes through each sector:
 - (a) for the upper sector—the upper sector reference point,
 - (b) for the middle sector—the middle sector reference point,
 - (c) for the lower sector—the lower sector reference point.
- (4) The classification of a block may differ from sector to sector.
- (5) The classification of a block is to be entered in the River Register.
- (6) If a block is not classified, or its classification is not entered in the River Register, in relation to any or all sectors, it is taken to be a low flow block in the sector concerned.

Note—

Classification of a block of the Hunter River establishes when discharges will be permitted. As a general rule, participants may discharge saline water into high flow and flood flow blocks.

11 Flow ranges

- (1) For the purposes of this Part, the low flow range, high flow range and flood flow range for each sector is as specified next to the sector concerned in the Table to this clause.
- (2) In the Table, **ML** means megalitres.

Table
Classification of river blocks

Sector	Low flow range	High flow range	Flood flow range
Upper	Less than 1,000 ML per day	1,000 ML per day–4,000 ML per day (inclusive)	Exceeds 4,000 ML per day
Middle	Less than 1,800 ML per day	1,800 ML per day–6,000 ML per day (inclusive)	Exceeds 6,000 ML per day
Lower	Less than 2,000 ML per day	2,000 ML per day–10,000 ML per day (inclusive)	Exceeds 10,000 ML per day

12 Classification of block—upper sector

- (1) **Low flow** A block is to be classified low flow in relation to the upper sector if it is predicted that:
 - (a) the rate of flow of the block in the upper sector will be in the low flow range for the upper sector, or

- (b) the rate of flow of the block in either the middle sector or the lower sector (or both) will be in the low flow range for those sectors.

(2) **High flow** A block is to be classified high flow in relation to the upper sector if it is predicted that:

- (a) the rate of flow of the block in the upper sector will be in the high flow range for the upper sector and the rate of flow of the block in the middle sector and lower sector will be in the high flow or flood flow range for those sectors, but will not be in the low flow range in either of those sectors, or
- (b) the rate of flow of the block in the upper sector will be in the flood flow range for the upper sector, and the rate of flow of the block in either the middle sector or the lower sector (or both) will be in the high flow range for those sectors, but will not be in the low flow range for either of those sectors.

(3) **Flood flow** A block is to be classified flood flow in relation to the upper sector if it is predicted that:

- (a) the rate of flow of the block in the upper sector will be in the flood flow range for the sector, and
- (b) the rate of flow of the block in both the middle sector and the lower sector will be in the flood flow range for those sectors.

13 Classification of block—middle sector

(1) **Low flow** A block is to be classified low flow in relation to the middle sector if it is predicted that:

- (a) the rate of flow of the block in the middle sector will be in the low flow range for the middle sector, or
- (b) the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.

(2) **High flow** A block is to be classified high flow in relation to the middle sector if it is predicted that:

- (a) the rate of flow of the block in the middle sector will be in the high flow range for the middle sector and the rate of flow of the block in the lower sector will be in the high flow or flood flow range for the lower sector, or
- (b) the rate of flow of the block in the middle sector will be in the flood flow range for the middle sector, and the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.

(3) **Flood flow** A block is to be classified flood flow in relation to the middle sector if it is

predicted that:

- (a) the rate of flow of the block in the middle sector will be in the flood flow range for the sector, and
- (b) the rate of flow of the block in the lower sector will be in the flood flow range for the lower sector.

14 Classification of block—lower sector

- (1) **Low flow** A block is to be classified low flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.
- (2) **High flow** A block is to be classified high flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.
- (3) **Flood flow** A block is to be classified flood flow in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the flood flow range for the sector.

Division 2 River Register

15 River Register

- (1) The Services Co-ordinator is to establish and maintain a River Register.
- (2) The Services Co-ordinator is to enter in the River Register:
 - (a) such matters as are required to be included in it by this Regulation or by the EPA, and
 - (b) any additional matters that the Services Co-ordinator considers appropriate.
- (3) The River Register may be kept wholly or partly by means of a computer (including by means of an on-line service).
- (4) The River Register is to be made available for inspection by the public (including participants in the scheme) at an office of the Services Co-ordinator or another person or body appointed to provide the River Register.
- (5) If the River Register is kept wholly or partly by means of a computer, subclause (4) may be complied with by providing a computer print-out or providing access to a computer that can be used to view the River Register.

Note—

The Services Co-ordinator may enter into a contract with any person for the provision of the River Register. This is dealt with under Part 6 (Administration of scheme).

16 Entry of information in River Register

The Services Co-ordinator is not required to classify a block, or to make any other determination under this Regulation that is required to be entered in the River Register, until it is satisfied that it has enough information to do so with a reasonable degree of accuracy.

Part 3 Discharge rules

Division 1 Preliminary

17 Salinity targets

- (1) The object of the discharge rules is to ensure that salinity levels in the Hunter River catchment do not, as a result of discharges of saline water by participants in the scheme, exceed the salinity targets set out in this clause.
- (2) The electrical conductivity of saline water in a high flow block is not at any stage to exceed the following targets:
 - (a) 600 EC in the upper sector (determined at the upper sector reference point),
 - (b) 900 EC in the middle sector (determined at the middle sector reference point),
 - (c) 900 EC in the lower sector (determined at the lower sector reference point).
- (3) The targets set out in subclause (2) are referred to in this Regulation as the **high flow salinity targets**.
- (4) The electrical conductivity of saline water in a flood flow block, determined as the average salinity level of the block, is not to exceed the following targets for each sector:
 - (a) 900 EC in the upper sector (determined at the upper sector reference point),
 - (b) 900 EC in the middle sector (determined at the middle sector reference point),
 - (c) 900 EC in the lower sector (determined at the lower sector reference point).
- (5) In addition, the electrical conductivity of saline water in a flood flow block is not at any stage to exceed 1500 EC in any sector.
- (6) The targets set out in subclauses (4) and (5) are referred to in this Regulation as the **flood flow salinity targets**.
- (7) The Services Co-ordinator is to have regard to this clause in exercising its functions under this Part.
- (8) In this clause:

EC means electrical conductivity, measured in microSiemens per centimetre.

18 Definitions

In this Part:

relevant sector, in relation to the holder of a discharge licence, means the sector into which any saline water discharged from the licence holder's authorised discharge point first flows.

sector credit discount factor means the sector credit discount factor for a block when it is in an identified sector, determined by the Services Co-ordinator under this Part and entered in the River Register.

Division 2 Principal rules about discharges

19 No discharges except from authorised discharge point

It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged into the Hunter River catchment except from the licence holder's authorised discharge point or points.

20 No discharges except during site discharge period

It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged from an authorised discharge point otherwise than during a site discharge period for that authorised discharge point.

21 Services Co-ordinator to determine site discharge period

- (1) The Services Co-ordinator is to determine a site discharge period for each authorised discharge point, in relation to each high flow or flood flow block.

Note—

There are no site discharge periods for low flow blocks. The purpose of that restriction is to ensure that discharges of saline water are made into high flow and flood flow blocks, and not into low flow blocks.

- (2) The site discharge period for an authorised discharge point is the period in which discharges of saline water are permitted from that authorised discharge point, subject to this Part.
- (3) In determining the site discharge period, the Services Co-ordinator is to ensure that any discharge of saline water that is made from an authorised discharge point in a sector is made into a block that is a high flow block or a flood flow block in that sector.
- (4) The start and finish times for the site discharge period are to be determined by the Services Co-ordinator based on an estimate of the time it will take a discharge from an authorised discharge point to reach and mix with a block as it passes through the sector in which the authorised discharge point is located.

- (5) In determining the site discharge period, the Services Co-ordinator may make such adjustments as the Services Co-ordinator thinks fit to optimise water quality. For example, the Services Co-ordinator may adjust the start and finish times so as to ensure discharges mix with the higher flows of the block.
- (6) The start and finish times for each site discharge period, in relation to a particular high flow or flood flow block, are to be entered in the River Register.

22 Maximum discharge during site discharge period

- (1) The maximum volume of saline water that may be discharged by the holder of a discharge licence into the Hunter River catchment during a site discharge period for the holder's authorised discharge point is:
 - (a) the licence holder's volume discharge limit for the block to which the site discharge period relates, determined in accordance with this Part, or
 - (b) the licence holder's tributary protection limit (if any),whichever is the lower.

Note—

The tributary protection limit (if any) for saline water discharges is specified in the discharge licence.

- (2) If a discharge licence has more than one authorised discharge point, the total volume of all discharges of saline water from those points during the site discharge period for those points must not exceed the maximum volume of saline water that may be discharged by the holder of the licence under subclause (1).
- (3) It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged in contravention of this clause.

Note—

Under the Act, the maximum penalty for a contravention of a licence condition is \$250,000 (in the case of a corporation) or \$120,000 (in the case of an individual). Further penalties apply to continuing offences.

Division 3 Volume discharge limit—high flow block

Note—

This Division sets out the method for calculating a licence holder's volume discharge limit in relation to a high flow block. This Division does not apply if a trading rules order is in force. In that case, the total allowable discharge of salt, and volume discharge limits, are to be determined as provided for by Division 5.

23 High flow block—determination of volume discharge limit

- (1) A licence holder's volume discharge limit, in relation to a block that is a high flow block in the licence holder's relevant sector, is to be determined in accordance with the following steps:

Step 1: Determine the number of credits the licence holder can use for the high flow block

The number of credits that a licence holder may use for a high flow block is to be determined as follows:

$$E = Cr \times D$$

Where:

E is the number of credits that a licence holder may use for a high flow block.

Cr is the number of credits held by the licence holder in respect of the block at the time at which the discharge takes place (as entered in the Credit Register), being credits that are in force, and excluding any credits forfeited under this Regulation or that are excluded under Part 5.

Note—

Parts 4 and 5 explain credit holdings and trading in credits. Under Part 5, a credit that is transferred in contravention of the Regulation cannot be counted toward the holder's volume discharge limit.

D is the sector credit discount factor for the block in the licence holder's relevant sector at the start of the discharge.

Step 2: Determine the licence holder's individual salt discharge limit

The licence holder's salt discharge limit is to be determined as follows:

$$L = \frac{T \times E}{1,000}$$

Where:

L is the licence holder's salt discharge limit (in tonnes).

T is the total allowable discharge for the block (in tonnes) at the start of the discharge.

E is the number of credits that a licence holder may use for a high flow block, being the amount determined in step 1 rounded down to the nearest whole number.

Step 3: Calculate the salt concentration of the water to be discharged

The salt concentration of the water to be discharged is to be calculated as follows:

$$C = \frac{EC \times F}{1,000}$$

Where:

C is the salt concentration of the water to be discharged by the licence holder, measured in tonnes per megalitre.

EC is the mean electrical conductivity of the water discharged by the licence holder, measured in microSiemens per centimetre, calculated in accordance with subclause (2).

F is the conversion factor set out in the discharge licence.

Step 4: Determine the volume discharge limit

The volume discharge limit of the licence holder is to be determined as follows:

$$V = \frac{L}{C}$$

Where:

V is the licence holder's volume discharge limit for the block (in megalitres).

L is the licence holder's salt discharge limit for the block (calculated in step 2).

C is the salt concentration in the saline water to be discharged (calculated in step 3).

- (2) The mean electrical conductivity of the water discharged is to be estimated before the discharge takes place, and monitored throughout the period of the discharge, in accordance with the conditions of the discharge licence. If the mean electrical conductivity of the water discharged differs from any estimate made before the discharge is completed, the volume discharge limit must be re-calculated using the actual figures (and the amount of saline water discharged must be reduced if necessary).

24 Sector credit discount factor—high flow block

- (1) The Services Co-ordinator may, for the purpose of ensuring that the full exercise of credit entitlements does not result in a high flow salinity target for any sector being exceeded, determine a sector credit discount factor that is to be applied in relation to a high flow block while it is in a particular sector.
- (2) The sector credit discount factor is to be one or a fraction of one.
- (3) The sector credit discount factor is to be entered in the River Register.

25 Total allowable discharge of salt

- (1) The Services Co-ordinator is to determine a total allowable discharge of salt in relation to each block that is a high flow block.
- (2) The total allowable discharge of salt is to be determined by calculating the maximum amount of salt that may be discharged in the sector or sectors in which the block is a high flow block so that, taking into account the river flow and background salinity

levels, the salinity target for the high flow sector that is the farthest downstream is not exceeded.

(3) The following are examples of the operation of subclause (2):

(a) Example 1: Block is high flow in all sectors

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in all sectors so that the high flow salinity target for the lower sector (900 EC) is not exceeded.

(b) Example 2: Block is high flow in the upper and middle sectors, and flood flow in the lower sector

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in the upper and middle sectors so that the high flow salinity target for the middle sector (900 EC) is not exceeded.

(c) Example 3: Block is high flow in the upper sector, and flood flow in the middle and lower sectors

The total allowable discharge will be determined by calculating the maximum amount of salt that may be discharged in the upper sector so that the high flow salinity target for the upper sector (600 EC) is not exceeded.

(4) The total allowable discharge is to be expressed in tonnes (or fractions of tonnes).

(5) The total allowable discharge of salt for each block that is a high flow block is to be entered in the River Register.

Division 4 Volume discharge limit—flood flow blocks

26 Flood flow block

(1) There is no volume discharge limit in relation to a block that is a flood flow block in the licence holder's relevant sector.

Note—

A block will not be classified flood flow in the upper or middle sector unless it is also predicted to be in the flood flow range in all downstream sectors.

(2) Accordingly, during a site discharge period for a block that is a flood flow block in the licence holder's relevant sector, the maximum volume of saline water that the licence holder may cause or permit to be discharged is the licence holder's tributary protection limit (if any).

Note—

This Division does not apply if a trading rules order is in force. In that case, the volume discharge limit is to be determined as provided for by Division 5.

Division 5 Trading rules order

27 Imposition of trading rules by EPA

- (1) If at any time it appears that the flood flow salinity targets have been exceeded, the EPA may conduct an investigation to determine whether the flood flow salinity targets were exceeded as a result of discharges of saline water by participants in the scheme.
- (2) Following that investigation, if the EPA is satisfied that the flood flow salinity targets were exceeded as a result of discharges of saline water by participants in the scheme, the EPA may, by order published in the Gazette, direct that the trading rules be used during flood flows.
- (3) Any such order is called a **trading rules order**.
- (4) A trading rules order takes effect on the publication of the order in the Gazette or on a later date specified in the order.
- (5) A trading rules order remains in force for the period (not exceeding 5 years) specified in the order.

28 Effect of trading rules order

- (1) Divisions 3 and 4 do not apply in respect of any period during which a trading rules order is in force.
- (2) This Division applies to the calculation of a licence holder's volume discharge limit in relation to a block that is a high flow block or a flood flow block in the licence holder's relevant sector in respect of any period in which a trading rules order is in force.

29 Effect of order—determination of volume discharge limit

- (1) A licence holder's volume discharge limit, in relation to a block that is a high flow block or flood flow block in the licence holder's relevant sector, is to be determined in accordance with the following steps:

Step 1: Determine the number of credits the licence holder can use for the block

The number of credits that a licence holder may use for a high flow block or flood flow block is to be determined as follows:

$$E = Cr \times D$$

Where:

E is the number of credits that a licence holder may use for a high flow block or flood flow block.

Cr is the number of credits held by the licence holder in respect of the block at the time at which the discharge takes place (as entered in the Credit Register), being

credits that are in force, and excluding any credits forfeited under this Regulation or that are excluded under Part 5.

Note—

Under Part 5, a credit that is transferred in contravention of the Regulation cannot be counted toward the holder's volume discharge limit.

D is the sector credit discount factor for the block in the licence holder's relevant sector at the start of the discharge.

Step 2: Determine the licence holder's individual salt discharge limit

The licence holder's salt discharge limit is to be determined as follows:

$$L = \frac{T \times E}{1,000}$$

Where:

L is the licence holder's salt discharge limit (in tonnes).

T is the total allowable discharge for the block (in tonnes) at the start of the discharge.

E is the number of credits that a licence holder may use for a high flow block or flood flow block, being the amount determined in step 1 rounded down to the nearest whole number.

Step 3: Calculate the salt concentration of the water to be discharged

The salt concentration of the water to be discharged is to be calculated as follows:

$$C = \frac{EC \times F}{1,000}$$

Where:

C is the salt concentration of the water to be discharged by the licence holder, measured in tonnes per megalitre.

EC is the mean electrical conductivity of the water discharged by the licence holder, measured in microSiemens per centimetre, calculated in accordance with subclause (2).

F is the conversion factor set out in the discharge licence.

Step 4: Determine the volume discharge limit

The volume discharge limit of the licence holder is to be determined as follows:

$$V = \frac{L}{C}$$

Where:

V is the licence holder's volume discharge limit for the block (in megalitres).

L is the licence holder's salt discharge limit for the block (calculated in step 2).

C is the salt concentration in the saline water to be discharged (calculated in step 3).

- (2) The mean electrical conductivity of the water discharged is to be estimated before the discharge takes place, and monitored throughout the period of the discharge, in accordance with the conditions of the discharge licence. If the mean electrical conductivity of the water discharged differs from any estimate made before the discharge is completed, the volume discharge limit must be re-calculated using the actual figures (and the amount of saline water discharged must be reduced if necessary).

30 Sector credit discount factor

- (1) The Services Co-ordinator may, for the purpose of ensuring that the full exercise of credit entitlements does not result in a high flow salinity target or flood flow salinity target for any sector being exceeded, determine a sector credit discount factor that is to be applied in relation to a high flow or flood flow block while it is in a particular sector.
- (2) The sector credit discount factor is to be one or a fraction of one.
- (3) The sector credit discount factor is to be entered in the River Register.

31 Total allowable discharge of salt

- (1) The Services Co-ordinator is to determine a total allowable discharge of salt in relation to each block that is a flood flow or high flow block.
- (2) The total allowable discharge of salt is to be determined by calculating the maximum amount of salt that may be discharged in the sector or sectors in which the block is a flood flow or high flow block so that, taking into account the river flow and background salinity levels, the salinity target for the lower sector is not exceeded.
- (3) The total allowable discharge is to be expressed in tonnes (or fractions of tonnes).
- (4) The total allowable discharge of salt for each block that is a flood flow or high flow block is to be entered in the River Register.

Division 6 Other rules relating to discharges

32 Saline water to be discharged at a regular rate

- (1) Saline water is to be discharged from an authorised discharge point in such a manner as to ensure that, as far as is reasonably practicable, saline water is discharged at approximately the same rate throughout the site discharge period.

Note—

The object of this clause is to prevent salinity “spikes” in the Hunter River.

- (2) It is a condition of a discharge licence that the licence holder does not cause or permit saline water to be discharged in contravention of this clause.

33 Record keeping requirements

- (1) A holder of a discharge licence who causes or permits saline water to be discharged into the Hunter River catchment must make a record of the following:
 - (a) the date and time at which the discharge started and finished,
 - (b) the total volume (in megalitres) of saline water discharged during that discharge period,
 - (c) the quantity of salt (in tonnes) discharged during that discharge period,
 - (d) the mean electrical conductivity of water discharged during that discharge period,
 - (e) the unique identification number of the block to which the relevant site discharge period relates, as entered in the River Register,
 - (f) the total allowable discharge for that block, as entered in the River Register at the date and time at which the discharge started,
 - (g) the number of credits held by the licence holder, as entered in the Credit Register, as at the date and time at which the discharge started,
 - (h) any other matters relating to the discharge that the EPA, by notice in writing to the holder of the discharge licence, requires the holder to include in the record.
- (2) The record must be made in a form and manner approved by the EPA.
- (3) The record must be retained by the licence holder for at least 4 years after the discharge is completed.

Note—

Part 7.3 of Chapter 7 of the Act allows the EPA, or an authorised officer, to require any person to furnish records to the EPA or authorised officer.

- (4) It is a condition of a discharge licence that the licence holder does not contravene this

clause.

- (5) Subclause (1) (f) and (g) do not apply in respect of a discharge that is made during a site discharge period for a flood flow block, unless a trading rules order is in force.

34 Reporting requirements

- (1) The EPA may, by notice in writing to the holder of a discharge licence, require the holder to provide information to the EPA about the licence holder's anticipated saline water discharge requirements.
- (2) A licence holder must not, without reasonable excuse, fail to comply with any such requirement.
- (3) It is a condition of a discharge licence that the licence holder does not contravene this clause.

Division 7 Emergency dilution arrangements

35 Defence—emergency dilution arrangements

- (1) If at any time the EPA is satisfied that:
- (a) a contravention by a licence holder of clause 20 (No discharges except during site discharge period) or clause 22 (Maximum discharge during site discharge period) is imminent, and
 - (b) the licence holder has taken all reasonable steps to avoid the contravention,
- the EPA may approve the licence holder discharging saline water in accordance with an emergency dilution arrangement.
- (2) An emergency dilution arrangement is an arrangement under which a licence holder purchases or secures the release of water from the Water Administration Ministerial Corporation (being water that is additional to any other water that is generally purchased from or released by the Corporation), and uses that water for the sole purpose of diluting the discharge of saline water that is the subject of the arrangement.
- (3) The EPA may approve the licence holder discharging saline water in accordance with such an arrangement only if satisfied that:
- (a) the discharge will not increase the overall salinity level of the Hunter River catchment (taking into account salinity levels upstream of the authorised discharge point of the licence holder), and
 - (b) the licence holder purchases or secures the release of sufficient water to ensure that the rate of flow of the Hunter River catchment, at the time and point of the

discharge, achieves a target rate determined by the EPA, and

- (c) the arrangement is consistent with the water sharing provisions of any management plan under the [Water Management Act 2000](#) that has effect in relation to the area concerned.
- (4) An approval given by the EPA under this clause:
 - (a) is to be in writing, and
 - (b) is subject to such conditions as may be specified by the EPA in the approval.
- (5) It is a defence to a prosecution for an offence arising from an alleged contravention of clause 20 or 22 that the licence holder discharged the saline water concerned in accordance with such an approval.
- (6) An approval under this clause must not authorise a licence holder to exceed the licence holder's tributary protection limit.

Part 4 Credits in scheme

Division 1 General

36 Creation of credits

- (1) Credits in the scheme are to be created by the EPA.
- (2) Credits are to be in a form approved by the EPA.

37 Authority conferred by credit

- (1) A credit, when held by the holder of a discharge licence, confers authority on the holder to discharge 0.1% of the total allowable discharge for a high flow block, subject to the discharge rules, during the period in which the credit remains in force.
- (2) If a trading rules order is in force, a credit also confers authority on the holder to discharge 0.1% of the total allowable discharge for a flood flow block, subject to the discharge rules, during the period in which the credit remains in force.
- (3) A credit does not confer any authority on a person to discharge saline water unless the person also holds a discharge licence.

38 Lifespan of credit

- (1) A credit remains in force for the period specified in relation to the credit in the Credit Register, expressed by reference to a number of sequential blocks, and expires at the end of that period.
- (2) A credit ceases to be in force during any period in which it is suspended under this

Regulation.

39 Who may hold credit

- (1) Any person may hold a credit.
- (2) (Repealed)

Division 2 Initial allocation of credits

40 First issue credits

- (1) On the commencement of this Regulation, the EPA is to create 1,000 credits in the scheme (***first issue credits***).
- (2) Those first issue credits are to have a lifespan that commences on the commencement of this Regulation.
- (3) Of those first issue credits:
 - (a) 200 are to have a lifespan ending on 30 June 2004, and
 - (b) 200 are to have a lifespan ending on 30 June 2006, and
 - (c) 200 are to have a lifespan ending on 30 June 2008, and
 - (d) 200 are to have a lifespan ending on 30 June 2010, and
 - (e) 200 are to have a lifespan ending on 30 June 2012.

41 Allocation of first issue credits to relevant licence holders

- (1) On the commencement of this Regulation, the first issue credits are to be issued to the persons referred to in Schedule 1, in accordance with that Schedule.
- (2) Each person who is allocated first issue credits is to be allocated an equal number of first issue credits of each possible lifespan. For example, if a person is eligible for 15 first issue credits, the participant should be allocated 3 credits with a lifespan ending in 2004, 3 credits with a lifespan ending in 2006, 3 credits with a lifespan ending in 2008, 3 credits with a lifespan ending in 2010 and 3 credits with a lifespan ending in 2012.
- (3) The first issue credits are to be allocated free of charge. This subclause does not affect any liability for a contribution in respect of the credit under Part 7.

Division 3 Allocation of residual first issue credits

42 Residual first issue credits

- (1) Any first issue credits that are allocated to the EPA under Schedule 1 (the ***residual***

first issue credits) may be retained by the EPA.

- (2) The EPA may allocate all or any of the residual first issue credits to any other person as provided for by this Division.
- (3) Any residual first issue credits that are not allocated by the EPA by the time the first auction of credits is held are to be sold at that first auction.

43 Notice of intention to allocate residual first issue credits

- (1) If the EPA proposes to allocate any residual first issue credits it must:
 - (a) cause a notice to be published in the Gazette and in a newspaper circulating throughout the State or in the locality in which the scheme operates inviting eligible persons to apply for the allocation of residual first issue credits, and
 - (b) allow a period of not less than 21 days for the making of those applications to the EPA.
- (2) An application for an allocation of residual first issue credits must be made to the EPA:
 - (a) in a form and manner approved by the EPA, and
 - (b) before the end of the period specified in the notice as being the period in which those applications may be made.
- (3) A person may apply for the allocation of residual first issue credits whether or not the person holds a discharge licence.
- (4) However, if the person does not hold a discharge licence, any undertaking by the EPA to allocate residual credits to the person:
 - (a) is conditional on the person applying for, and being issued with, a discharge licence within such period as may be specified by the EPA, and
 - (b) is taken to be revoked if the EPA refuses to issue a discharge licence to the person.

44 Eligibility criteria

- (1) Residual first issue credits may be allocated by the EPA to persons who are eligible for the allocation of residual first issue credits, and who apply for an allocation in accordance with clause 43.
- (2) A person is eligible for the allocation of residual first issue credits if the person carries out or proposes to carry out any new or expanded activity that:
 - (a) results or is likely to result in discharges of saline water in the Hunter River catchment, and

- (b) cannot be carried out unless authorised by a discharge licence or a variation of a discharge licence.
- (3) An activity is a **new activity** for the purposes of this clause if the EPA is satisfied that it was not being carried out, or was not being regulated by a discharge licence, at the commencement of this Regulation.
- (4) An activity is an **expanded activity** for the purposes of this clause if the activity is not a new activity but the EPA is satisfied that the scale of the activity, or the nature of the activity, has been, or is proposed to be, changed so as to require a variation of the discharge licence, being a variation that will authorise a significant increase in the environmental impact of the activity authorised by the licence.

Note—

If the EPA proposes to vary a licence in such a manner and the proposed variation has not been the subject of an environmental assessment and public consultation under the [Environmental Planning and Assessment Act 1979](#), the EPA is required to invite and consider public submissions before it varies the licence under section 58 (6) of the Act.

45 Number of credits to be allocated

- (1) Residual first issue credits are to be allocated in multiples of 5.
- (2) In determining the number of residual first issue credits to be allocated to an eligible person, the EPA is to have regard to the following:
 - (a) the number of residual first issue credits available for allocation,
 - (b) the number of applicants who are eligible for allocation of residual first issue credits,
 - (c) the criteria used to allocate pilot scheme credits to participants in that scheme and the need to maintain equity between those participants and new entrants to the scheme,
 - (d) the type of activity for which the credits are sought and any relevant difference between that activity and the types of activities for which pilot scheme credits were allocated,
 - (e) whether any first issue credits have already been allocated to the person and, if so, how many,
 - (f) in the case of expanded activities, the scale of the activities relative to the scale of the activities before the expansion and the impact of the expansion on the need to discharge saline water,
 - (g) the period remaining before the first auction of credits.

Division 4 Creation and sale of new credits

46 New credits to be created every 2 years

- (1) After the creation of the first 1,000 credits in the scheme, the EPA is to create 200 new credits in the scheme every 2 years, for the purpose of replacing the 200 credits that expire every 2 years.
- (2) The credits are to have a lifespan of 10 years.
- (3) The 10-year lifespan of the credits so created must not start until the end of the lifespan of the credits that they replace, so that at no stage will there be more than 1,000 credits in force.
- (4) However, a credit may be sold by the EPA before its lifespan starts.

47 Sale of new credits by auction

- (1) The EPA is to make arrangements for the sale of credits created as provided for by this Division from time to time by auction.
- (2) At least one auction is to be held in every 2-year period.
- (3) An auction is to be conducted in a manner determined by the EPA, in accordance with such rules (if any) as the EPA may make from time to time in connection with the conduct of auctions.
- (4) Without limiting subclause (3), the rules made by the EPA in connection with the conduct of an auction may include:
 - (a) a limit on the number of credits that may be purchased by any one person, and
 - (b) a requirement that the successful bidder provide to the EPA evidence to the satisfaction of the EPA that the bidder has complied with the other rules of the auction.
- (5) A copy of the rules (if any) that apply to an auction is to be made available for public inspection on the website of the EPA before the auction is conducted.
- (6) The EPA may charge a fee to any person who buys a credit at auction in order to recover the costs incurred by or on behalf of the EPA in connection with the auction.

48 Sale of new credits by private treaty

The EPA may sell any credit that is not sold at auction by private treaty or otherwise.

49 Sale of residual first issue credits

Any first issue credits that are not allocated by the EPA as provided for by Divisions 2 and 3 may also be sold in the manner provided for by this Division.

Part 5 Trading in credits

Division 1 Trading in credits

50 Trading in credits

- (1) Credits are tradeable only as provided by this Part.
- (2) A credit may be transferred in accordance with this Part.
- (3) A credit cannot be assigned or mortgaged, charged, leased or otherwise encumbered.

51 Trading facility to be established

- (1) The EPA is to make arrangements for the provision of a service to facilitate the trading of credits (a ***credit trading facility***).
- (2) The credit trading facility is to be an on-line service provided by the Registrar.
- (3) The credit trading facility may be used only by registered credit traders.
- (4) The EPA may approve the trading of credits by alternative means to the credit trading facility if the on-line service is not available, or in any other circumstances in which the EPA considers it appropriate.

52 Registration of credit traders

- (1) The Registrar may, on application by an eligible person, register the person as a credit trader.
- (2) Any person is eligible to be registered as a credit trader.
- (3) However, until the first auction of credits (not being first issue credits) is held, only the following persons are eligible to be registered as credit traders:
 - (a) persons who hold a relevant licence,
 - (b) the EPA.

Note—

Until the first auction of credits, only holders of a relevant licence and the EPA may hold credits in the scheme.

- (4) An application for registration as a credit trader is to be made to the Registrar in a form approved by the Registrar.
- (5) The Registrar may require the applicant, in or in connection with the application, to supply to the Registrar such information as the Registrar may reasonably require in connection with the trading of credits by the applicant or the use of the credit trading

facility.

- (6) The Registrar may refuse any application for registration as a credit trader that is not made in accordance with this clause.
- (7) The Registrar may cancel the registration of a person as a credit trader on request of the person.
- (8) Until the first auction of credits (not being first issue credits) is held, the Registrar may cancel the registration of a person as a credit trader if the person ceases to hold a relevant licence.

53 Use of credit trading facility

- (1) Use of the credit trading facility is subject to such conditions as may be imposed by the Registrar from time to time.
- (2) If access to the credit trading facility is conditional on the use of a password, and a person accesses the credit trading facility by means of the password associated with a registered credit trader, the Registrar is entitled to assume that the person is the registered credit trader or is acting with the authority of the registered credit trader.

54 Transfers to be effected by registered traders by means of facility

A transfer of a credit does not have effect unless:

- (a) it is effected by means of the credit trading facility, or by alternative means approved by the EPA, and
- (b) the parties to the transfer are registered credit traders.

55 Transfers may be made for consideration

A transfer of a credit may be made for consideration or otherwise.

Division 2 Trading rules

56 General rules as to transfers

A credit may be transferred as follows:

- (a) as it relates to a particular block, or
- (b) as it relates to a particular series of blocks, being blocks that occur in a sequential order, or
- (c) as it relates to all remaining blocks in the lifespan of the credit.

57 To whom credits may be transferred

- (1) A credit may be transferred to any person, but only if the person is a registered credit trader.
- (2) (Repealed)

58 Retrospective transfers not permitted

- (1) A retrospective transfer of a credit is not permitted.
- (2) For the purposes of this clause, a transfer of a credit, in respect of a block, is retrospective if, when the transfer takes effect, the site discharge period for that block in relation to the transferee's authorised discharge point has already ended.

59 Credits valid for single use only

- (1) A credit may be utilised only:
 - (a) once in relation to a block, and
 - (b) by one discharge licence holder in relation to a block.
- (2) A part of a credit, as it relates to a particular block, is not transferable.
- (3) Accordingly, a person must not transfer a credit in respect of a block to any other person after having purported to include that credit in the calculation of the volume discharge limit of the transferor.

Note—

It is permissible for a credit holder who does not want to make a discharge into a particular river block to transfer the authority conferred by the credit in respect of that block to a licence holder who does wish to discharge into that block. This clause prevents a licence holder from “splitting” one credit with another licence holder by agreeing to share the authority conferred by the credit between the two of them or from using the credit and then transferring it to a discharge licence holder further downstream.

60 Effect of sector credit discount factor on transfers

- (1) If a sector credit discount factor of less than one in relation to a particular block and sector is entered in the River Register, a person must not transfer any credit in respect of that block to a licence holder whose authorised discharge point is in that sector, unless the transferor's authorised discharge point is in the same sector.
- (2) In this clause:

sector credit discount factor has the meaning given by Part 3.

Note—

The purpose of applying a sector credit discount factor of less than one is to ensure that the salinity target in a particular sector is not exceeded. As a result of this clause and clause 59, a licence holder cannot transfer any

part of a credit that the person is disqualified from using as a result of the application of a sector credit discount factor. The licence holder can transfer the whole credit, but only to a licence holder whose authorised discharge point is in a sector to which a sector credit discount factor of less than one does not apply. In addition, once a sector credit discount factor of less than one has been entered in the River Register, licence holders whose authorised discharge points are in the sector to which the sector credit discount factor applies are not permitted to acquire more credits to authorise a particular discharge.

61 Offence for contravention of trading rules

A person who transfers, or purports to transfer, a credit in contravention of the provisions of this Division is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
- (b) in the case of an individual—200 penalty units.

62 Effect of contravention of trading rules on volume discharge limit

- (1) A person who proposes to accept the transfer of a credit is under a duty to ensure that the credit is transferred in accordance with this Division.
- (2) If a credit is transferred, in respect of a block, to a discharge licence holder in contravention of this Division, the credit is to be excluded from the calculation of the volume discharge limit of the discharge licence holder in respect of that block under Part 3.
- (3) Subclause (2) applies even if the transfer of the credit is entered in the Credit Register.

Note—

A contravention of the provisions of this Regulation may also result in an enforcement or forfeiture order being made against a person under Part 8.

Division 3 Credit Register

63 Credit Register

- (1) The Registrar is to establish and maintain a Credit Register.
- (2) The following information is to be entered in the Credit Register in relation to each credit that is created in the scheme:
 - (a) the name of the person who holds each credit with respect to each block,
 - (b) the lifespan of the credit,
 - (c) such other particulars as the Registrar considers appropriate.
- (3) The Credit Register:

- (a) is to be in a form determined by the EPA, and
- (b) may be established and maintained wholly or partly by means of a computer (including by means of an on-line service), and
- (c) is to be made available for inspection by members of the public at an office of the Registrar in a manner approved by the EPA.

64 Transfers to be entered in Register

- (1) A transfer of a credit does not take effect until it is entered in the Credit Register, in accordance with such arrangements for the entry of transactions as may be approved by the EPA from time to time.
- (2) After a transfer of a credit is entered in the Credit Register:
 - (a) the transferee becomes the holder of the credit, in respect of the block or blocks concerned, and
 - (b) the transferor ceases to be the holder of the credit, in respect of the block or blocks concerned.
- (3) The following information, in relation to a credit transfer, is to be entered in the Credit Register (in accordance with the arrangements referred to in subclause (1)):
 - (a) the names of the transferor and the transferee,
 - (b) the date and time at which the transfer occurred,
 - (c) the number of credits transferred and the blocks to which the transfer applies.

65 Correction of Credit Register

The Registrar may correct any error or mistake in the Credit Register.

Part 6 Administration of scheme

Division 1 Services Co-ordinator

66 Services Co-ordinator

- (1) There is to be a Services Co-ordinator for the scheme.
- (2) The Services Co-ordinator is to be the EPA or a person or body appointed by the EPA as Services Co-ordinator.
- (3) The Services Co-ordinator has the following functions:
 - (a) to monitor and gauge the flow of the Hunter River, for the purpose of carrying out its functions under this Regulation,

- (b) to establish and maintain the River Register,
- (c) to make the contents of the River Register available to the public,
- (d) such other functions as are conferred or imposed on it by this Regulation or, if the Services Co-ordinator is appointed by the EPA, by the EPA.

67 Engagement of contractors to carry out functions

- (1) The Services Co-ordinator may enter into a contract with any person (referred to in this Part as a **sub-contractor**) under which the person agrees to carry out any of the functions of the Services Co-ordinator.
- (2) If the Services Co-ordinator is not the EPA, such a contract may be entered into only with the approval of the EPA.

68 Functions of EPA

- (1) The EPA is to ensure that any contract or other arrangement under which the Services Co-ordinator (if it is not the EPA) is appointed, or under which a sub-contractor is appointed, includes such provisions as the EPA considers appropriate:
 - (a) to ensure that the objects and aims of the scheme are attained, and
 - (b) to ensure that the Services Co-ordinator or sub-contractor is accountable for its performance in connection with the scheme.
- (2) Without limiting subclause (1), the contract or arrangement may require the Services Co-ordinator or sub-contractor:
 - (a) to make and keep records in connection with the exercise of its functions under this Regulation and the contract, and
 - (b) to retain those records for at least 4 years after they are made, and
 - (c) to make those records available to the EPA on request, and
 - (d) to establish and maintain suitable monitoring stations for the purpose of detecting contraventions of this Regulation, and
 - (e) to advise the EPA of any suspected contravention of this Regulation, and
 - (f) to provide the EPA with copies of the River Register.
- (3) The EPA is to ensure that the contract or arrangement requires the Services Co-ordinator to report to the EPA on the performance of its functions under the contract or arrangement on an annual basis and to make that report available for public inspection.

Division 2 Registrar

69 Registrar

- (1) There is to be a Registrar for the scheme.
- (2) The Registrar is to be the EPA or a person or body appointed as Registrar by the EPA.
- (3) The Registrar has the functions conferred or imposed on the Registrar by this Regulation.

Division 3 Operations Committee

70 Appointment of Operations Committee

- (1) There is constituted by this Regulation a body corporate to be called the Hunter River Salinity Trading Scheme Operations Committee.
- (2) The Operations Committee is to consist of the following members, each of whom is to be appointed by the EPA:
 - (a) 1 person who is a member of the board of the Hunter-Central Rivers Catchment Management Authority or a person nominated by that Authority,
 - (b) 4 persons appointed to represent the interests of licence holders,
 - (c) 1 person appointed to represent the interests of persons who use water from the Hunter River catchment for irrigation,
 - (d) 1 person appointed to represent environmental interests,
 - (e) 1 person who is a member of a committee or other organisation concerned in the management of the Hunter River or of any other river in the Hunter River catchment (who may be a member of the board of the Hunter-Central Rivers Catchment Authority, or a person nominated by that Authority, who is additional to the member or person referred to in paragraph (a)),
 - (f) 1 person who is an officer or employee of the Department of Natural Resources, appointed on the nomination of the head of that Department.
- (3) Each person appointed by the EPA as a member of the Operations Committee is to be a person who, in the opinion of the EPA, has sufficient skills and experience to be a member of the Operations Committee.
- (4) If the EPA declines to appoint a person nominated as a member of the Operations Committee by a person or body as referred to in subclause (2), the EPA may invite the person or body to nominate another person as member of the Operations Committee.
- (5) The member referred to in subclause (2) (a) is to be Chairperson of the Operations

Committee.

- (6) Schedule 2 has effect.

71 Functions of Operations Committee

- (1) The Operations Committee has the following functions:
- (a) to advise the EPA on such matters as are referred to it by the EPA in connection with the operation of the scheme,
 - (b) such other functions as may be conferred or imposed on it by this Regulation or by the EPA in connection with the scheme.
- (2) The EPA may appoint the Operations Committee as Services Co-ordinator.

72 Failure by Operations Committee to perform functions

- (1) If the EPA is not satisfied with the performance of the Operations Committee under this Regulation, the EPA may:
- (a) suspend the Operations Committee from performing its functions under this Regulation, and
 - (b) remove any or all of the members of the Committee from office (as provided by Schedule 2).
- (2) If the EPA appoints the Operations Committee as Services Co-ordinator, and is not satisfied with the performance of the Operations Committee as Services Co-ordinator, the EPA may do any of the following:
- (a) terminate the appointment of the Operations Committee as Services Co-ordinator,
 - (b) suspend the Operations Committee from performing any of the functions of Services Co-ordinator (in which case the EPA is to carry out those functions during the suspension period),
 - (c) remove any or all of the members of the Committee from office (as provided by Schedule 2).

Part 7 Cost recovery

Division 1 Contribution payable by participants towards costs of scheme

73 Participants required to contribute toward costs of scheme

- (1) A person who, at the start of a scheme year, is a participant in the scheme is required to pay to the EPA a contribution as referred to in section 295H of the Act, calculated in

accordance with this Part.

- (2) The EPA is to inform each person who is required to pay a contribution under this clause of the amount that the person is required to pay, by notice in writing given to the person.
- (3) The contribution must be paid within 30 days after the notice is given by the EPA, or by such later date as may be specified by the EPA in the notice.
- (4) The contribution may be paid in instalments, in accordance with arrangements specified by the EPA in the notice.

Note—

Section 295H (4) of the Act provides that if an instalment is not paid by the due date, the balance then becomes due and payable.

- (5) If a contribution (or an instalment) is not paid by the due date for its payment, the contribution (or balance payable) is to be increased by the amount of simple interest calculated at the rate of 25 per cent per annum on the amount of the contribution unpaid for each day that elapses after the due date and before the date of payment.
- (6) For avoidance of doubt, a person remains liable for a contribution under this Part even if the person ceases to be a participant in the scheme during the scheme year.

Note—

The EPA is not required to pay a contribution under this Part (see section 295H (6) of the Act).

74 Calculation of contribution

The contribution payable by a person under this Part is calculated as follows:

$$C = H + DL$$

Where:

C is the contribution payable by the person.

H is the contribution payable by the person on the person's credit holdings (if any) at the start of the scheme year, calculated in accordance with this Part.

DL is the contribution payable by the person on the discharge licence (if any) held by the person at the start of the scheme year, calculated in accordance with this Part.

Note—

The calculation of the contribution payable by a participant in the scheme is based on their credit holdings at the start of the scheme year and their licence. If the participant held a discharge licence but did not hold any credits at the start of the scheme year, the participant will only be liable for a contribution on the participant's discharge

licence (**DL** in the formula above). If the participant held credits but not a discharge licence, the participant will only be liable for a contribution on the participant's credit holdings at the start of the scheme year (**H** in the formula above). If the participant held credits and a discharge licence, the participant will be liable for a contribution in respect of both.

75 Contribution on credit holdings

For the purposes of this Part, the contribution payable by a person on the person's credit holdings at the start of a scheme year is calculated as follows:

$$H = 0.5 \times TCA \times \frac{CH}{TCH}$$

Where:

H is the contribution payable by a person on the person's credit holdings at the start of the scheme year.

TCA is the total contributions amount (calculated under Division 2).

Note—

TCA is multiplied by 0.5 in the formula because half of the total contributions amount is paid by participants in the scheme who are credit holders and the other half is paid by participants in the scheme who are discharge licence holders. Participants who hold both credits and a discharge licence will be liable to contribute both as credit holders and licence holders.

CH is the number of credits held by the person at the start of the scheme year.

TCH is 1000, minus the number of credits (if any) held by the EPA at the start of the scheme year.

76 Contribution on licence

(1) For the purposes of this Part, the contribution payable by a person on a discharge licence held by the person at the start of the scheme year is calculated as follows:

$$DL = 0.5 \times \frac{TCA}{TL}$$

Where:

DL is the contribution payable by the person on a discharge licence held by the person at the start of the scheme year.

TCA is the total contributions amount (calculated under Division 2).

Note—

TCA is multiplied by 0.5 in the formula because half of the total contributions amount is paid by participants in the scheme who are credit holders and the other half is paid by participants in the scheme who are discharge licence holders. Participants who hold both credits and a discharge licence will be liable to

contribute both as credit holders and licence holders.

TL is the total number of discharge licences held by participants in the scheme at the start of the scheme year.

- (2) For avoidance of doubt, if more than one discharge licence is held by a person, a contribution is payable under this clause in respect of each of those discharge licences.

77 Contributions on forfeited credits

- (1) For the purposes of this Part, a person is taken to continue to hold a credit that is forfeited to the EPA under this Regulation until the EPA sells the credit.
- (2) Any such credit is not to be considered to be held by the EPA for the purposes of a calculation made under this Part.

Note—

The object of this clause is to ensure that participants who forfeit credits remain liable to make a contribution under this Part in respect of the credit until the EPA sells the credit.

Division 2 Calculating total contributions amount

78 Total contributions amount

- (1) For the purposes of this Part, the **total contributions amount** for a scheme year is the total cost of the scheme for the scheme year estimated in accordance with this Division, and adjusted by the EPA (if required) in accordance with Division 3.
- (2) The total cost of the scheme for the scheme year is the total of the following costs:
 - (a) the costs of the Services Co-ordinator in connection with the scheme for the scheme year, as estimated by the Services Co-ordinator under this Division,
 - (b) the costs of the Registrar in connection with the scheme for the scheme year, as estimated by the Registrar under this Division,
 - (c) the costs of the EPA in connection with the scheme for the scheme year, as estimated by the EPA under this Division.

79 Costs of Services Co-ordinator

- (1) For the purposes of this Part, the costs of the Services Co-ordinator in connection with the scheme for a scheme year consists of the costs incurred by the Services Co-ordinator (including any sub-contractor of the Services Co-ordinator), being costs of a kind referred to in section 295H (1) of the Act, in exercising its functions under this Regulation during the scheme year.
- (2) For the purposes of determining contributions payable in respect of a scheme year,

the Services Co-ordinator must, before the start of each scheme year, prepare and adopt an estimate of the costs of the Services Co-ordinator in connection with the scheme for the scheme year.

- (3) If the Services Co-ordinator is not the EPA, the estimate may be adopted by the Services Co-ordinator only with the concurrence of the EPA.

80 Costs of Registrar

- (1) For the purposes of this Part, the costs of the Registrar in connection with the scheme for a scheme year consists of the costs incurred by the Registrar, being costs of a kind referred to in section 295H (1) of the Act, in exercising its functions under this Regulation.
- (2) For the purpose of determining the contributions payable in respect of a scheme year, the Registrar must, before the start of each scheme year, prepare and adopt an estimate of the costs of the Registrar in connection with the scheme for the scheme year.
- (3) If the Registrar is not the EPA, the estimate may be adopted by the Registrar only with the concurrence of the EPA.

81 Costs of EPA

- (1) For the purposes of this Part, the costs of the EPA in connection with the scheme for a scheme year consists of the costs incurred by the EPA, being costs of a kind referred to in section 295H (1) of the Act, not including those costs that are included in the costs of the Services Co-ordinator or the Registrar in connection with the scheme year.
- (2) The EPA must, before the start of each scheme year, prepare and adopt an estimate of the costs of the EPA in connection with the scheme for the scheme year.

Division 3 Adjustments to total cost

82 Functions of EPA

The EPA is to adjust the total contributions amount for a scheme year from time to time as required in accordance with this Division.

83 Reconciliation at end of scheme year

- (1) At the end of a scheme year, the EPA is to calculate the actual cost of the scheme for that scheme year.
- (2) The actual cost of the scheme for the scheme year is the total of the following:
- (a) the costs of the Services Co-ordinator in connection with the scheme for the scheme year, as assessed by the Services Co-ordinator at the end of the scheme year,

- (b) the costs of the Registrar in connection with the scheme for the scheme year, as assessed by the Registrar at the end of the scheme year,
 - (c) the costs of the EPA in connection with the scheme for the scheme year, as assessed by the EPA at the end of the scheme year.
- (3) The Services Co-ordinator and the Registrar are to provide the EPA with such information as is necessary for the purpose of calculating the actual cost of the scheme for the scheme year.
- (4) If the actual cost of the scheme for the scheme year exceeds the total contributions amount in respect of that scheme year, the amount of the difference is to be added to estimated cost of the scheme for the next scheme year, and the total contributions amount for that year is to be increased accordingly.
- (5) If the actual cost of the scheme for the scheme year is less than the total contributions amount in respect of that scheme year, the amount of the difference is to be deducted from the estimated cost of the scheme for the next scheme year, and the total contributions amount for that year is to be decreased accordingly.

84 Auction and sale proceeds

The EPA is to deduct from the total cost of the scheme for a scheme year the amount of the proceeds (if any) of any auction or other sale of credits by the EPA under the scheme held during the previous scheme year and the total contributions amount is to be decreased accordingly.

85 Adjustments to contributions

The EPA may determine the arrangements for payment of any additional contribution, or refund of contribution, that is required because of an adjustment to the total contributions amount under this Division.

Part 8 Enforcement

86 General enforcement power of EPA

- (1) The EPA may, by order in writing served on a person:
- (a) suspend any or all credits held by the person, and
 - (b) prohibit the person from transferring or accepting the transfer of credits, or impose conditions on any such transfers.
- (2) Such an order (an **enforcement order**) may be made only if the EPA is satisfied that the person:
- (a) has contravened a provision of this Regulation, or

(b) has contravened a condition of the person's licence, being a condition that relates to the scheme.

- (3) An enforcement order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order, subject to clause 87.
- (4) An enforcement order may be expressed to have effect for a specified period, or until the fulfilment of specified conditions, or until further order of the EPA.
- (5) An enforcement order has effect according to its tenor, despite any other provision of this Regulation.
- (6) A person must not contravene the terms of an enforcement order.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
 - (b) in the case of an individual—200 penalty units.
- (7) An enforcement order does not affect the liability of a person to pay a contribution in respect of a licence or credit under this Regulation.
 - (8) This clause does not prevent any proceedings being taken for an offence against the Act or this Regulation.

87 Confirmation of enforcement order

- (1) An enforcement order ceases to be in force at the end of the period of 60 days after the order takes effect, unless the EPA confirms the making of the enforcement order before the end of that period, in accordance with this clause.
- (2) The making of an enforcement order is confirmed if notice of the confirmation is served on the person against whom the order was made.
- (3) The EPA must not confirm the making of an enforcement order unless:
 - (a) it has given notice to the person against whom the order was made of its reasons for making the order, and
 - (b) it has given the person a reasonable opportunity to make submissions with respect to the order, and
 - (c) it has taken into consideration any such submissions by the person.

88 Forfeiture of credits

- (1) The EPA may, by order in writing served on a person, require the forfeiture of any credits held by the person to the EPA.

- (2) Such an order (a **forfeiture order**) may be made only if the EPA is satisfied that the person:
 - (a) has contravened a provision of this Regulation, or
 - (b) has contravened a condition of the person's licence, being a condition that relates to the scheme, or
 - (c) has failed to pay a contribution required under this Regulation by the due date for its payment.
- (3) The order is to specify the number of credits forfeited.
- (4) In the case of a forfeiture order made because of a contravention of this Regulation, the EPA may, in determining how many credits are to be forfeited, take into account:
 - (a) any pecuniary benefit that has been obtained by the person, or any cost that has been avoided by the person, because of the contravention, and
 - (b) any other relevant matters.
- (5) In the case of a forfeiture order made because of a failure to pay a contribution by the due date for its payment, the EPA may order the forfeiture of the number of credits that, in the opinion of the EPA, would, if sold by auction or public tender, raise an amount sufficient to meet the following:
 - (a) the contribution that is payable by the person, together with any interest payable on the contribution, and
 - (b) the costs that are likely to be incurred by the EPA in connection with the sale of the credits.
- (6) A forfeiture order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order.
- (7) On the date that a forfeiture order takes effect, the credit or credits specified in the order are forfeited to the EPA.
- (8) This clause does not prevent any proceedings being taken:
 - (a) for an offence against the Act or this Regulation, or
 - (b) for the recovery of a contribution as a debt payable to the EPA, as provided for by section 295H (3) of the Act.

Note—

Under section 295H (3) of the Act, a contribution payable to the EPA is recoverable by the EPA as a debt in a court of competent jurisdiction.

89 Notice of reasons for making forfeiture order

- (1) The EPA must not make a forfeiture order unless:
 - (a) it has given notice to the person against whom the order is to be made of its intention to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the person a reasonable opportunity to make submissions with respect to the proposed order, and
 - (d) it has taken into consideration any such submissions by the person.
- (2) For the purpose of preventing the trading of credits that are proposed to be forfeited under the forfeiture order, the EPA may make an enforcement order against the person, with effect from the date notice of its intention to make the forfeiture order is given to the person.

90 Effect of forfeiture order

- (1) A forfeited credit continues in force as if it had not been forfeited, except that the EPA becomes the holder of the credit.
- (2) The EPA is to make arrangements for the sale of any credits forfeited to the EPA by auction or public tender.
- (3) This clause is subject to Part 7 (which requires a person who forfeits a credit to continue to pay to the EPA a contribution in respect of the credit until it is sold).

91 Offence of providing false information

A person who, in or in connection with an application for credits or any other application or information provided to the EPA, the Services Co-ordinator or the Registrar under this Regulation, provides any information, or makes any statement, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units,
- (b) in the case of an individual—100 penalty units.

Note—

Other enforcement powers

The Act also provides that certain offences can be dealt with by the issue of a penalty notice (sometimes referred to as an on the spot fine) by an authorised officer. Under the [Protection of the Environment Operations \(Penalty Notices\) Regulation 1999](#), an officer or employee of the EPA is authorised to issue a penalty notice for the offence of contravening a licence condition (including the licence conditions referred to in Part 3). In such a

case, the on the spot fine is \$1,500 (in the case of a corporation) or \$750 (in the case of an individual). If the offence is dealt with by a court, the maximum penalty that the court can impose for the offence is \$250,000 (in the case of a corporation) or \$120,000 (in the case of an individual).

Part 9 Miscellaneous

92 Suspension of scheme

- (1) A suspension of the scheme, or part of the scheme, as provided by section 293A of the Act, may be effected by the EPA by order published in the Gazette.
- Note—**
The Act requires the EPA to undertake public consultation before suspending the scheme, unless the suspension is required urgently in order to protect the environment, public health, property, or the integrity of the scheme, or is necessary because of an emergency.
- (2) The order is to specify the period during which the scheme or part of the scheme is suspended, but that period may be extended by further order published in the Gazette.
- (3) The order may specify the effect of the suspension on any rights conferred or obligations imposed under the scheme.
- (4) It is a condition of a discharge licence that the holder of the licence does not discharge saline water during any period in which the scheme or part of the scheme is suspended by the EPA, except with the written approval of the EPA or in accordance with the terms of any order made under this clause.
- (5) Subclause (4) has effect despite the discharge rules.

93 Review of Regulation—timetable

The review referred to in section 295C of the Act is to be undertaken by the Minister as soon as possible after the period of 10 years from the date of commencement of this Regulation.

94 Amendment of [Protection of the Environment Operations \(Penalty Notices\) Regulation 1999](#)

The [Protection of the Environment Operations \(Penalty Notices\) Regulation 1999](#) is amended by inserting at the end of Schedule 1:

[Protection of the Environment Operations \(Hunter River Salinity Trading Scheme\) Regulation 2002](#)

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)

Part 10 Savings and transitional provisions

95 Regulation supersedes pilot scheme

- (1) On the commencement of this Regulation, the pilot scheme is terminated and all pilot scheme credits cease to have effect.
- (2) The provisions of this Regulation supersede the guidelines and rulebook relating to the pilot scheme (being documents published by the EPA), and the provisions of those guidelines and rulebook cease to have effect when this Regulation commences.

96 Services Co-ordinator

- (1) On the commencement of this Regulation, the Water Administration Ministerial Corporation is taken to have been appointed by the EPA as Services Co-ordinator.
- (2) This clause does not prevent the EPA from terminating the appointment of the Water Administration Ministerial Corporation as Services Co-ordinator or varying the terms of that appointment.

97 First scheme year

The first scheme year of the scheme is taken to be the period commencing on the date of commencement of this Regulation and ending on 30 June in the following year.

98 Discharge licences issued under pilot scheme

- (1) A reference in this Regulation to a discharge licence includes a licence that, immediately before the commencement of this Regulation, authorises a person to discharge saline water under the pilot scheme.
- (2) A reference in any such licence to the pilot scheme is taken, on the commencement of this Regulation, to be a reference to the scheme established by this Regulation.
- (3) This clause ceases to have effect 6 months after the commencement of this Regulation.

Schedule 1 Allocation of first issue credits

(Clauses 4 and 41)

Credit holder	Licence number (if applicable)	Premises name (if applicable)	Number of credits
Bengalla Mining Company Pty Ltd	6538	Bengalla Mine	35

Bulga Coal Management Pty Ltd	563	Saxonvale Colliery Holding	40
Camberwell Coal Pty Ltd	3390	Camberwell Coal Mine Colliery Holding	15
Coal and Allied Industries Ltd	640	Hunter Valley Operations	120
Coal and Allied Industries Ltd	1976	Mt Thorley Colliery Holding	0
Cumnock No 1 Colliery Pty Ltd	37	Cumnock No 1 Colliery	15
Dartbrook Coal Pty Ltd	4885	Dartbrook Coal Mine	15
Drayton Coal Pty Ltd	1323	Drayton Coal Mine Colliery Holding	25
Hunter Valley Coal Corporation Pty Ltd	4460	Mt Owen Coal Mine	15
Lemington Coal Mines Ltd	1497	Lemington Coal Mine Colliery Holding	40
Liddell Coal Operations Pty Ltd	2094	Liddell Colliery Holding	55
Macquarie Generation	779	Bayswater Power Station	230
Mt Arthur Coal Company Ltd	113	Bayswater Colliery	25
Muswellbrook Coal Company Ltd	656	Muswellbrook No 2 Open Cut Coal Mine	10
Nardell Coal Corporation Pty Ltd	10337	Nardell Coal Corporation Pty Ltd	30
New South Wales Environment Protection Authority	na	na	85
Ravensworth Operations Pty Ltd	10860	Ravensworth East Mine	0
Ravensworth Operations Pty Ltd	2652	Ravensworth Operations Narama Mine	100
Redbank Project Pty Ltd	11262	Redbank Power Station	35
Rix's Creek Pty Ltd	3391	Rix's Creek Colliery	25
United Collieries Pty Ltd	3141	United Colliery	10
Wambo Mining Corporation Pty Ltd	529	Wambo Mining Corporation	35

Warkworth Mining Ltd	1376	Warkworth Colliery Holding	40
Total credits			1,000

Note—

Although some of the participants referred to above are not to be issued with first issue credits, they will be able to participate in trading in first issue credits.

Schedule 2 Constitution and procedure of Operations Committee

(Clause 70)

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Operations Committee.

member means any member of the Operations Committee.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the member.

4 Deputies

- (1) The EPA may, from time to time, appoint a person to be the deputy of a member, and the EPA may revoke any such appointment.
- (2) In the absence of a member, the member’s deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the person.

- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the EPA, or
 - (d) is removed from office by the EPA under this clause, or
 - (e) is absent from 4 consecutive meetings of the Operations Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the EPA or unless the member is excused by the EPA for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The EPA may at any time remove a member from office.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson

- (1) The Chairperson vacates office as Chairperson if the person:
- (a) is removed from office by the EPA under this clause, or
 - (b) ceases to be a member.
- (2) The EPA may at any time remove the Chairperson from office as Chairperson.

8 Disclosure of pecuniary interests

- (1) If:

(a) a member of the Operations Committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Operations Committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Operations Committee.

(2) A disclosure by a member at a meeting of the Operations Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Operations Committee in the minutes of the meeting concerned.

(4) A member of the Operations Committee is not disqualified from taking part in any deliberation of the matter, or in a decision with respect to the matter, because of the member's pecuniary interest.

(5) A contravention of this clause does not invalidate any decision of the Operations Committee.

Part 3 Procedure

9 Procedures of Operations Committee

Subject to this Schedule, the procedures of the Operations Committee are to be determined by the EPA and, subject to any such determination, by the Operations Committee.

10 Quorum

The quorum for a meeting of the Operations Committee is a majority of its members for the time being.

11 Presiding member

- (1) The Chairperson is to preside at a meeting of the Operations Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Operations Committee at which a quorum is present is the decision of the Operations Committee.

13 Minutes

The Operations Committee is required to keep minutes of proceedings at its meetings.

Dictionary

(Clause 4)

authorised discharge point means a discharge point in the Hunter River catchment that is specified in a discharge licence as a point from which discharges of saline water by the licence holder are authorised (subject to the scheme).

block or **river block** means a block identified in the River Register, as referred to in Part 2.

credit means a credit in the scheme.

Credit Register means the Credit Register required to be kept under this Regulation.

credit trading facility means the facility for the trading of credits provided by the Registrar, as referred to in Part 5.

discharge licence is defined in clause 6.

discharge rules means the provisions set out in Part 3.

enforcement order means an order made by the EPA under clause 86.

first issue credit means any of the first 1,000 credits created in the scheme by the EPA.

flood flow block, in relation to a particular sector, means a block classified as a flood flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register.

flood flow salinity target has the meaning given by clause 17.

forfeiture order means an order made by the EPA under clause 88.

high flow block, in relation to a particular sector, means a block classified as a high flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register.

high flow salinity target has the meaning given by clause 17.

Hunter River catchment is defined in clause 7.

lifespan of a credit means the period (expressed in terms of sequential blocks) for which it remains in force.

low flow block, in relation to a particular sector, means:

- (a) a block classified as a low flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register, or
- (b) a block in respect of which no classification is entered in the River Register.

lower sector means that part of the Hunter River catchment downstream of the middle sector reference point and upstream of the lower sector reference point.

lower sector reference point means the Hunter River gauging station number 210001 at Singleton.

middle sector means that part of the Hunter River catchment downstream of the upper sector reference point and upstream of the middle sector reference point.

middle sector reference point means the Hunter River gauging station number 210127 immediately upstream of the confluence of the Hunter River and Glennies Creek.

on-line service means a service provided by or through the facilities of a computer communication system and accessed through a telecommunications network that allows for:

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data from one computer to another.

Operations Committee means the Hunter River Salinity Trading Scheme Operations Committee established by the EPA under this Regulation.

participant in the scheme has the meaning given by clause 5.

pilot scheme means the pilot scheme of the same name as the scheme established by this Regulation that was conducted by the EPA and the Department of Land and Water Conservation before the commencement of this Regulation.

pilot scheme credit means a credit in the pilot scheme.

registered credit trader means a person who is registered by the Registrar as a credit trader under Part 5.

Registrar means the EPA or a person or body appointed by the EPA as Registrar.

relevant licence means a discharge licence or a licence that applies to premises referred to in Schedule 1.

residual first issue credit means any first issue credit allocated to the EPA as provided for by Schedule 1.

River Register means the River Register required to be kept under this Regulation.

saline water means water with an electrical conductivity of not less than 400 microSiemens per centimetre.

salinity target means a high flow salinity target or a flood flow salinity target.

scheme means the Hunter River Salinity Trading Scheme established by this Regulation.

scheme year means the period commencing on 1 July in any year and ending on 30 June in the following year.

sector means the upper sector, the middle sector or the lower sector.

sequential blocks means blocks that have identification numbers that are in sequential order.

Services Co-ordinator means the EPA or the person or body appointed by the EPA as Services Co-ordinator.

site discharge period, in relation to an authorised discharge point, means the site discharge period determined by the Services Co-ordinator under Part 3 for a high flow or flood flow block and entered in the River Register.

the Act means the [Protection of the Environment Operations Act 1997](#).

total allowable discharge means the total allowable discharge of salt for a block determined by the Services Co-ordinator under Part 3 and entered in the River Register.

total contributions amount has the meaning given by Part 7.

trading rules order—see Division 5 of Part 3.

tributary protection limit of a discharge licence holder means an amount specified in a discharge licence as the maximum amount of saline water that may be discharged by a licence holder from an authorised discharge point during any specified period.

upper sector means that part of the Hunter River catchment upstream of the upper sector reference point.

upper sector reference point means the Hunter River gauging station number 210055 upstream of the confluence of the Hunter River and the Goulburn River at Denman.

volume discharge limit of a discharge licence holder in respect of a block means the volume discharge limit calculated under Part 3.