



New South Wales

# Protection of the Environment Operations (General) Amendment (Newcastle Air Monitoring) Regulation 2015

under the

Protection of the Environment Operations Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

ROBERT STOKES, MP  
Minister for the Environment

## Explanatory note

The object of this Regulation is to make provision for the establishment of the Newcastle Local Air Quality Monitoring Network which is to be an environmental monitoring program under Part 9.3C of the *Protection of the Environment Operations Act 1997*.

This Regulation includes provisions:

- (a) to require holders of environment protection licences in the Newcastle local government area to pay a levy towards the cost of the monitoring program, and
- (b) to calculate the amount of the levy payable by those licence holders, and
- (c) to require licence holders to provide the Environment Protection Authority (the *EPA*) with information about emissions, and
- (d) to allow persons authorised by the EPA to enter land owned or occupied by licence holders for the purposes of the operation of the monitoring program, and
- (e) to require the EPA to make air quality data available on its website and to publicly report on the monitoring program.

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

## **Protection of the Environment Operations (General) Amendment (Newcastle Air Monitoring) Regulation 2015**

under the

Protection of the Environment Operations Act 1997

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations (General) Amendment (Newcastle Air Monitoring) Regulation 2015*.

### **2 Commencement**

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

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

### [1] Chapter 5A

Omit “—Upper Hunter Air Quality Monitoring Network” from the heading to the Chapter.

### [2] Chapter 5A, Part 1, heading

Insert before clause 79A:

## Part 1 Upper Hunter Air Quality Monitoring Network

### [3] Clauses 79A and 79C (1)

Omit “Chapter” wherever occurring. Insert instead “Part”.

### [4] Chapter 5A, Part 2

Insert after clause 79L:

## Part 2 Newcastle Local Air Quality Monitoring Network

### 79M Definitions

(1) In this Part:

**annual levy** means the levy payable each levy period by each licence holder under this Part.

**general program costs** means all costs incurred by the EPA in respect of the monitoring program (other than the costs of monitoring oxides of nitrogen, sulphur dioxide or particulate matter), including the following:

- (a) costs set out in section 295Z (4) of the Act,
- (b) costs associated with purchasing, constructing, maintaining and updating equipment, facilities and infrastructure,
- (c) costs associated with the use of equipment, facilities and infrastructure,
- (d) costs associated with the administration of the program, including the costs associated with reporting on the program and any advisory committees established to advise the EPA in relation to the program.

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

**licence holder** means a person who holds a licence that authorises a scheduled activity to be carried out at premises in Newcastle.

**licence holder's emissions** means the total emissions from all premises within Newcastle to which the holder's licence relates as determined by the EPA.

**monitoring program** means the environmental monitoring program operated by or on behalf of the EPA that monitors air quality in Newcastle and is known as the Newcastle Local Air Quality Monitoring Network, and includes any changes made by the EPA to that program from time to time.

**Newcastle** means the Newcastle local government area and includes the Subject Land (including the Deferred Matter) as shown on State Environmental Planning Policy (Three Ports) 2013 Land Application Map Sheet LAP\_003.

**particulate matter** means particulate matter measuring less than 10 micrometres.

**total LGA emissions** means the total emissions under licences from premises within Newcastle as determined by the EPA.

- (2) Emissions under this Part are to be calculated in kilograms.

#### **79N Determining emissions**

- (1) In determining emissions for the purpose of this Part the EPA is to use the data from the following sources and, in the case of any conflict, is to use data from a source appearing higher in the list rather than data from a source appearing lower in the list:
- (a) estimates provided by a licence holder to the EPA before the end of the levy period to which the data relates, but only if the EPA is satisfied that the estimates relate to emissions from all points and diffuse sources and have been determined in accordance with methods approved by the EPA,
  - (b) data from the *Air Emissions Inventory for the Greater Metropolitan Region in NSW* (the **AEI**) published by the EPA,
  - (c) data from the *National Pollutant Inventory* (the **NPI**) published by the Department of the Environment of the Commonwealth,
  - (d) data collected by the EPA through other emission inventory or reporting programs.
- (2) In using data from the AEI or NPI the EPA:
- (a) is to use the most recent data for the levy period to which the data relates, and
  - (b) in the case of an industry for which there is no relevant data, is to use data from an industry that the EPA reasonably believes is conducting comparable scheduled activities at a comparable scale.
- (3) The EPA is to make any data used to determine emissions available to a licence holder if requested in writing to do so.

#### **79O Objectives**

The objective of the monitoring program is to provide government, industry and the community with:

- (a) reliable and up-to-date information on air quality in Newcastle, and
- (b) information that is of assistance in assessing changes in air quality and identifying the major sources of monitored pollutants.

#### **79P Licence holders required to pay levy**

- (1) A licence holder must pay an annual levy in respect of the monitoring program under this Part.
- (2) The EPA, during a levy period, is to provide written notice to each licence holder of the amount of the annual levy that the licence holder is required to pay for the levy period.
- Note.** The amount will be based on an estimate made by the EPA under clause 79S.
- (3) The amount must be paid within 30 days after the notice is given by the EPA or by such later date as is specified by the EPA in the notice.
- (4) If an amount is not paid by the due date, the amount is to be increased by the amount of simple interest calculated at the rate of 25% per year on the amount unpaid for each day that elapses after the due date and before the date of payment.

- (5) The EPA may, if it considers it appropriate to do so, reduce its costs in respect of a levy period to take account of any arrears paid in respect of an earlier levy period.

**79Q Calculation of annual levy**

- (1) The annual levy payable by a licence holder for a levy period is calculated by adding together the amount of such of the following as are payable by the licence holder during the levy period:
- (a) the oxides of nitrogen monitoring component,
  - (b) the sulphur dioxide monitoring component,
  - (c) the particulate matter monitoring component,
  - (d) the general program costs component.

(2) **Oxides of nitrogen monitoring component**

A licence holder is required to pay that proportion of the EPA's costs in monitoring oxides of nitrogen during the levy period that is equal to the proportion of the licence holder's emissions of oxides of nitrogen during the levy period to the total LGA emissions of oxides of nitrogen during that period.

(3) **Sulphur dioxide monitoring component**

A licence holder is required to pay that proportion of the EPA's costs in monitoring sulphur dioxide during the levy period that is equal to the proportion of the licence holder's emissions of sulphur dioxide during the levy period to the total LGA emissions of sulphur dioxide during that period.

(4) **Particulate matter monitoring component**

A licence holder is required to pay that proportion of the EPA's costs in monitoring particulate matter during the levy period that is equal to the proportion of the licence holder's emissions of particulate matter during the levy period to the total LGA emissions of particulate matter during that period.

(5) **General program costs component**

A licence holder is required to pay that proportion of the EPA's general program costs during the levy period that is equal to the proportion of the licence holder's total emissions of oxides of nitrogen, sulphur dioxide and particulate matter during the levy period to the total LGA emissions of oxides of nitrogen, sulphur dioxide and particulate matter during that period.

- (6) A licence holder is not required to pay an annual levy for a levy period if the amount when calculated under this clause is less than \$100, and in such a case the emissions of that licence holder during the levy period are not to be taken into account in calculating total LGA emissions in respect of that levy period.

**Note.** In such a case the amount payable by other licence holders will be effectively increased as their proportion of the total emissions will be larger.

**79R Emissions from vessels to be included in licence holder's emissions**

- (1) The total emissions from vessels in Newcastle of oxides of nitrogen, sulphur dioxide and particulate matter for a levy period are to be apportioned as follows between shipping premises:
- (a) those premises are to be divided into 3 levels as follows:
    - (i) level 1—shipping premises at which the annual capacity to load and unload is not more than 100,000 tonnes,

- (ii) level 2—shipping premises at which the annual capacity to load and unload is more than 100,000 tonnes but not more than 500,000 tonnes,
    - (iii) level 3—shipping premises at which the annual capacity to load and unload is more than 500,000 tonnes,
  - (b) the emissions of oxides of nitrogen, sulphur dioxide and particulate matter are then to be apportioned so that:
    - (i) equal amounts of each type of emissions are apportioned to premises at the same level, and
    - (ii) level 2 shipping premises are apportioned 3.3 times as many emissions of each type as level 1 shipping premises, and
    - (iii) level 3 shipping premises are apportioned 9 times as many emissions of each type as level 1 shipping premises.
- (2) Emissions in Newcastle from a vessel are taken not to be emissions from premises except as provided by this clause.
- (3) Emissions that are apportioned to premises under this clause are to be taken into account as part of the relevant licence holder's emissions and the total LGA emissions.
- (4) In this clause:  
*shipping premises* mean premises in Newcastle at which the scheduled activity of shipping in bulk is authorised to be carried out.

**79S Calculation of cost of monitoring program**

- (1) During each levy period, the EPA is to calculate an estimate of the cost to the EPA of each of the following for the levy period:
  - (a) the costs of monitoring oxides of nitrogen,
  - (b) the costs of monitoring sulphur dioxide,
  - (c) the costs of monitoring particulate matter,
  - (d) the general program costs.
- (2) After the end of a levy period, the EPA is to calculate the actual cost to the EPA of each of those matters for the levy period.
- (3) The EPA may, in respect of any difference between the estimated cost of a matter and the actual cost of that matter:
  - (a) carry forward the difference to a subsequent levy period, or
  - (b) determine arrangements for licence holders to make a payment or receive a refund in respect of that difference.

**79T EPA may direct licence holder to provide information**

- (1) The EPA may, for the purposes of this Part, direct a licence holder to provide to the EPA such information as may be specified in the direction.
- (2) A direction under this clause:
  - (a) must be given by notice in writing, and
  - (b) may specify the methodology or assumptions to be used by the licence holder in generating the required information, and
  - (c) may specify the manner and form in which the information is to be provided.

- (3) It is a condition of a licence holder's licence that the licence holder comply with a direction under this clause within the time (if any) specified in the direction.

**79U Licence holders to provide assistance to EPA**

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

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

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

**79V EPA to publish results of monitoring**

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

**79W EPA to report on monitoring program**

- (1) The EPA is to prepare a report containing the following matters in relation to the monitoring program:
- (a) a review of the effectiveness of the monitoring program in fulfilling its objectives,  
(b) the results of an independent audit (to be arranged by the EPA) of the efficiency and cost effectiveness of the monitoring program,  
(c) any recommendations for improvements to the monitoring program,  
(d) any other matters that the EPA considers appropriate or that an advisory committee established to advise the EPA in relation to the monitoring program considers appropriate.
- (2) The report is to be prepared by 1 September 2018 and then by 1 September every fourth year after that.
- (3) Each report is to be made available on the EPA's website.

**[5] Schedule 8 Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on commencement of Protection of the Environment Operations (General) Amendment (Newcastle Air Monitoring) Regulation 2015**

**First levy period extends back to 1 July 2014**

- (1) Emissions occurring on or after 1 July 2014 but before the commencement of Part 2 of Chapter 5A are to be taken into account under that Part in the same way as if those emissions had occurred after that commencement but before 1 July 2015.
- (2) Monitoring or general program costs of the EPA occurring on or after 1 July 2014 but before the commencement of Part 2 of Chapter 5A are to be taken into account under that Part in the same way as if those costs had occurred after that commencement but before 1 July 2015.

**Costs of establishing monitoring program to be added to first levy**

Any costs related to the establishment of the monitoring program under Part 2 of Chapter 5A are to be added to the general program costs for the first levy period even if those costs were incurred before that period commenced.