



Queensland

Environmental Protection Amendment Regulation (No. 4) 2011

Explanatory Notes for SL 2011 No. 248

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection Amendment Regulation (No. 4) 2011.

Authorising law

Section 580 of the *Environmental Protection Act 1994* provides that the Governor in Council may make regulations under the Act.

Section 320 of the *Environmental Protection Act 1994* provides that the way and circumstances in which 'public notice' may be given is prescribed under a regulation.

Section 19 of the *Environmental Protection Act 1994* provides that a regulation may prescribe an activity.

Section 59 of the *Environmental Protection and Other Legislation Amendment Act 2011* amends section 47 of the *Environmental Protection Act 1994* to require that an Environmental Impact Statement must be accompanied by the fee prescribed under a regulation.

Policy objectives and the reasons for them

The objectives of the regulation are to:

1. Provide a clear definition of when and how a person or company is to give public notice under the duty to notify where serious or material environmental harm is caused or threatened that is not authorised under the *Environmental Protection Act 1994*.
2. Encourage the amalgamation of environmental authorities for Level 2 mining projects into a single project environmental authority.
3. Better align the charging of fees for environmental authorities for Level 2 mining projects with the granting of tenure under the *Mineral Resources Act 1989* (MR Act).
4. Recognise the public service provided by environmental authority holders that operate solely for the purpose of maintaining State and National heritage places, or for the construction and maintenance of war graves, by removing annual fees.
5. Properly reflects the level of environmental risk that the small scale chemical manufacturers present to the environment.
6. Align existing Environmental Impact Statement (EIS) fees, currently charged at the draft Terms of Reference (ToR) stage, with each stage of the EIS assessment process.

The Department of Environment and Resource Management (the department) has experienced a number of situations where notification has not happened in a timely fashion or at all in accordance with the duty to notify. The *Natural Resources and Other Legislation Amendment Act (No.2) 2010* amended the *Environmental Protection Act 1994* to improve notice requirements of incidents that may cause serious or material environmental harm to affected landholders.

This amendment to the *Environmental Protection Regulation 2008* puts into effect the option of informing owners or occupiers of affected land by way of public notice, such as a television or radio broadcast, or signage which would bring the incident to the notice of affected owners or occupiers.

Under the *Environmental Protection Regulation 2008* the holder of multiple environmental authorities for Level 2 mining projects can already apply to amalgamate their environmental authorities into a single environmental authority which reduces the number of authorities on which

annual fees are payable. Many holders have been unaware of this opportunity. Accordingly, the department has been administering an increased number of environmental authorities for Level 2 mining projects, and holders have been paying annual fees for authorities that could have been amalgamated into single environmental authorities.

Prior to the commencement of a Level 2 environmental authority for a mining project, the holder must have the relevant tenure under the *Mineral Resources Act 1989*. The decision making point for the environmental authority and the tenure does not align. As a result of this, some holders of environmental authorities are required to pay annual fees despite not being able to legally commence operation. This is because the tenure has not been granted under the *Mineral Resources Act 1989*.

There are a small number of environmental authority holders for Level 2 mining projects that operate solely for the purpose of maintaining State and National heritage places or for the construction and maintenance of war graves. These holders are currently required to pay annual fees.

Schedule 2 (Chapter 4 activities and aggregate environmental scores) of the *Environmental Protection Regulation 2008* prescribes environmentally relevant activities (ERAs). Categories of regulation as well as licence fees for these ERAs are based on the aggregate environmental scores. These are prepared in accordance with the Environmental Emission Profiles methodology published by the department.

Following commencement of the *Environmental Protection Regulation 2008* on 1 January 2009, there have been representations made by stakeholders that the category for chemical manufacturing and the subsequent risk profile over estimates the risk that small scale operators present to the environment. Further, investigation by the department has confirmed that the current aggregate environmental scores assumed a higher risk scenario than presented by the small scale operators that only mix the pre-manufactured chemicals.

Under the *Environmental Protection Regulation 2008*, a fee is charged for those activities that undergo an EIS. The full fee is charged when the proponent submits the draft terms of reference to the department. If the project does not require a full EIS, the department must refund part of the initial fee to the proponent.

Section 59 of the *Environmental Protection and Other Legislation Amendment Act 2011* amends section 47 of the *Environmental Protection Act 1994* to require that a fee is submitted with an EIS. This amendment to

the *Environmental Protection Act 1994* means that instead of charging the full fee at the draft terms of reference stage, the fees can be incrementally charged at the draft terms of reference stage, and when the proponent moves through to a full EIS.

Achievement of policy objectives

The regulation achieves its objectives by amending the *Environmental Protection Regulation 2008* to:

1. State the way and the circumstances in which notification of an incident can be made by public notice. The operator is given the discretion to use public notice whenever they are required to notify owners or occupiers of affected land. However, it is likely that this form of notification would only be used where there are large numbers of owners/occupiers of affected land or where the nature of the incident makes it uncertain who the owner/occupiers are. The regulation further defines in what form the notification should be. It allows the notification to be made by any method which would bring the incident to the attention of affected owners or occupiers, including radio or television broadcast, or by newspaper distribution, or by signage. Notification is not limited to these methods. In cases where notification is made by signage, the amendment regulation prescribes the dimensions of the sign.
2. Provide a transitional period within which, the annual fees paid for an environmental authority that is extinguished by amalgamation, will be refunded. This transitional arrangement will be for a 12 month period from the date of commencement of the amendment regulation, covering amalgamation applications lodged from 1 March 2011. This amendment is a gesture of goodwill and recognises that small miners, especially in remote areas, were unable to easily access information to assist them in understanding the provisions of the legislation which allow amalgamations of environmental authorities.
3. Ensure that holders of an environmental authority for a Level 2 mining project are not required to pay annual fees until the relevant tenement is granted under the *Mineral Resources Act 1989*.
4. Require that the administering authority will refund the application fee for an environmental authority for a Level 2 mining project that cannot be acted on because the relevant tenure application has been refused under the *Mineral Resources Act 1989*.

5. Exempt from annual fees environmental authority holders for Level 2 mining projects that operate solely for the purpose of maintaining State and National heritage places, or for the construction and maintenance of war graves.
6. Introduce a new category and annual licence fee threshold for small scale chemical manufacturers that mix but do not manufacture chemicals. This threshold will be retrospective to 1 January 2009, and provide a more proportionate regulatory environment that is based on the level of risk that the small scale chemical manufacturers present to the environment.
7. Require that a fee of \$31,080 is paid when the draft terms of reference is submitted to the department. If the proponent moves through to a full EIS, a further \$93,240 will be charged. This incremental approach to charging fees removes the need for a refund process, and better aligns the work undertaken in assessing an EIS with the fees being charged. The amendment does not increase the overall cost of having an EIS assessed.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the object of the *Environmental Protection Act 1994*, that is, to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Inconsistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of other legislation.

Benefits and cost of implementation

This regulation amendment will provide clarity around the notification requirements for operators, presenting compliance benefits. Additionally it will provide operators with a level of flexibility around how they notify allowing the operator to use the means of notification best suited for the location and incident.

Encouraging holders of environmental authorities for Level 2 mining projects to amalgamate into single integrated projects will reduce unnecessary financial burden on the industry and provide administrative savings to the department. Government will experience some reduction in revenue as a result of the proposed changes. The exact decrease in revenue however is unknown, as it is not clear how many holders of environmental authorities for level 2 mining projects meet the requirements to be able to amalgamate their environmental authorities.

The exemption from annual fees for Level 2 mining projects that operate solely for the purpose of maintaining State and National heritage places or for the construction and maintenance of war graves will result in a decrease in government revenue of approximately \$1,545 per year.

The new category and annual licence fee threshold for small scale chemical manufacturers is estimated to reduce government revenue by approximately \$74,160 per year. This amendment better reflects the levels of risk that these activities present to the environment and is consistent with the intent for the fee structure under the *Environmental Protection Regulation 2008*.

The incremental approach to charging fees for EISs reduces administrative burden on the department by removing the need to refund part of the fee where proponent does not move through to a full EIS. This amendment does not change the overall cost to have an EIS assessed.

Consistency with fundamental legislative principles

Section 24(1)(i) of the *Legislative Standards Act 1992* was considered during the drafting of this regulation and this regulation is consistent with fundamental legislative principles. The amendments made by the regulation must be in subordinate legislation because the provisions being amended are in subordinate legislation.

Consultation

The department consulted with the Local Government Association of Queensland, the Queensland Resources Council, the Australian Industry Group and the Queensland Law Society regarding the definition of 'public notice'.

The department had targeted stakeholder meetings with operators of small scale chemical manufacturing, and small mining operations. These meetings were respectively about the new threshold for small scale chemical manufacturing and the fee changes for Level 2 mining projects.

The department consulted with the Queensland Resources Council and Australian Petroleum and Exploration Association about the changes the fees for EIS projects.

Reasons for non-inclusion of information

This explanatory note includes all of the information required by section 24(4) of the *Legislative Standards Act 1992*.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.

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