



Queensland

Environmental Protection Amendment Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 83

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection Amendment Regulation (No. 1) 2013.

Authorising law

The regulation is made under the *Environmental Protection Act 1994*.

Policy objectives and the reasons for them

The primary policy objective of this amending regulation is to amend the *Environmental Protection Regulation 2008*, to make statutory instruments that support environmental reforms introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Greentape Act). The legislation also contains some minor amendments that are essentially of an administrative nature and which correct errors that have arisen through historical amendments.

The primary policy objective is achieved through prescribing the following statutory instruments:

- the Guideline 'Financial Assurance under the *Environmental Protection Act 1994*';
- Eligibility criteria and standard conditions for geothermal exploration activities;
- Eligibility criteria and standard conditions for petroleum exploration activities;
- Eligibility criteria and standard conditions for petroleum pipeline activities; and
- Eligibility criteria and standard conditions for petroleum survey activities.

Achievement of policy objectives

The policy objectives will be achieved as follows:

Financial assurance guideline

The *Environmental Protection Act 1994* provides the ability for the administering authority to require a financial assurance. Financial assurance may be required to ensure that the government holds sufficient money to cover any costs that it may incur to achieve compliance with an environmental authority, should the holder be unable to meet the conditions or fail to rehabilitate or restore the environment. Financial assurances are commonly required for resources activities, extractive activities and waste disposal facilities as these activities typically cause significant disturbance to land, require rehabilitation at the end of their operational life and may cause land contamination. Under the Greentape Act the different circumstances when a financial assurance may be required have been streamlined into one requirement for all types of environmental authorities. The Guideline 'Financial Assurance under the *Environmental Protection Act 1994*' reflects the streamlining of environmentally relevant activities and sets out information requirements and decision making considerations.

Eligibility criteria

The Greentape Act introduced reforms which set out three different application types for environmentally relevant activities - standard applications, variation applications and site specific applications. Environmental authority applicants who wish to carry out lower risk activities can make a standard application if they satisfy eligibility criteria. Where an activity meets the eligibility criteria the operator will

automatically receive standard conditions for the environmental authority upon application without an assessment process. To provide flexibility, where an operator cannot meet all the standard conditions, they may make a variation application to change some of the conditions. All environmentally relevant activities not able to meet the eligibility criteria will be required to make a site specific application.

The Department of Environment and Heritage Protection carried out a risk assessment process to identify low risk activities for which a standard application process is suitable. As a result of this process, the *Environmental Protection Regulation 2008* will prescribe eligibility criteria for geothermal exploration, petroleum exploration activities, petroleum pipeline activities and petroleum survey licences.

Consistency with policy objectives of authorising law

This Regulation is consistent with the object of the *Environmental Protection Act 1994* which is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future.

Inconsistency with policy objectives of other legislation

This Regulation is consistent with the policy objectives of other legislation.

Alternate ways of achieving policy objectives

There is no alternative approach. These matters, and the statutory instruments, are established in legislation and legislative amendments are the only option to give effect to the policy objectives.

Benefits and costs of implementation

The Regulation contains amendments that are a further development of the Greentape Act that has been subject to a Regulatory Assessment Statement. The Greentape amendments reduce the regulatory burden on business, have a beneficial net impact on Government and no adverse impact on the community.

Financial assurance guideline

The new Guideline allows the Government to respond to and develop clear guidance material on the legislative amendments and processes (arising from the Greentape Act) that outline a standard process for financial assurance. The new guideline will be a benefit to industry by increasing certainty around their requirements (particularly for information) when making an application on the amount and form of financial assurance, as well as clearly explaining the decision-making process and timeframes. This will improve efficiency and transparency and will ultimately help to streamline and create a more robust system of financial assurance administration in Queensland. The new guideline also reduces the regulatory burden by amalgamating several existing guidelines or fact sheets about financial assurance into a single, current and comprehensive document.

Eligibility criteria

By prescribing the eligibility criteria, industry will be able to utilise the new legislative provisions for standard and variation applications. This will result in a significant reduction in regulatory burden to industry, with approximately 80% of the exploration activities for petroleum and gas being able to transition to the new process. This presents significant benefit to industry and reduced assessment effort to government.

Consistency with fundamental legislative principles

This Regulation is consistent with fundamental legislative principles.

Consultation

The Department of Environment and Heritage Protection undertook targeted consultation on the financial assurance guideline for 20 business days, between March and April 2013. Five substantive industry submissions were received including from petroleum, waste and mining companies and from industry associations.

The Department of Environment and Heritage Protection undertook public consultation on the draft eligibility criteria and standard conditions for various petroleum and geothermal activities. This was for 30 business days (as required by section 317 of the EP Act) between 28 February and 15 April 2013 for the petroleum exploration activity eligibility criteria and

standard conditions and between 7 March 2013 and 22 April 2013 for the geothermal exploration, petroleum survey and petroleum pipeline activity eligibility criteria and standard conditions. Ten submissions were received on the petroleum exploration activity eligibility criteria and standard conditions from petroleum industry associations and individual companies. Seven submissions were received in relation to the eligibility criteria for pipelines. EHP incorporated the recommendations by industry. Six submissions were received in relation to the eligibility criteria for petroleum survey activities. One submission was received in relation to the eligibility criteria for geothermal exploration activities.

All submissions were carefully considered and all guidelines and documents were revised to address feedback where appropriate.

Notes on Provisions

Clause 1 Short title

This clause provides that the Regulation may be cited as the *Environmental Protection Amendment Regulation (No. 1) 2013*.

Clause 2 Regulation amended

This clause provides that this regulation amends the *Environmental Protection Regulation 2008*.

Clause 3 Insertion of new chapter 3, pt 1, div 2A

This clause inserts a new Chapter 3, Part 1, Division 2A relating to prescribing guidelines for, or making, decisions about the amount and form of financial assurance, as required in sections 294 (3)(b) and 295(3)(b) of the *Environmental Protection Act 1994*. The guideline is called 'Financial Assurance under the *Environmental Protection Act 1994*' and will be published on the departmental website. The guideline:

- Sets out the minimum information requirements for an application for a decision about the amount and form of financial assurance (s294);
- Lists the decision criteria for deciding the amount and form of a financial assurance (ss295 and 305);

- Sets out the method of calculating financial assurance for the purposes of compliance statements (ss298 and 304); and
- Provides additional policy and explanatory material about how the government will administer financial assurance.

Clause 4 Replacement of ch 3, pt 3 hdg

This clause inserts a new heading for Chapter 3, Part 3 relating to eligibility criteria for environmentally relevant activities. The scope of eligibility criteria that are prescribed will be broadened by this amendment regulation.

Clause 5 Insertion of new s 24B

This clause inserts a new section 24B relating to the approval of eligibility criteria under section 318 of the *Environmental Protection Act 1994*.

Section 318 of the EP Act sets out the process for making eligibility criteria. Section 24B of this regulation provides that the eligibility criteria for environmentally relevant activities stated in a document mentioned in Schedule 3B are approved.

Where eligibility criteria (and standard conditions) have been developed, a standard application can be made for an environmentally relevant activity, if the activities comply with the eligibility criteria. Where an activity meets the eligibility criteria the operator will automatically receive standard conditions upon application without an assessment process. All activities that cannot comply with the eligibility criteria are required to make a site specific application.

Clause 6 Amendment of sch 2 (Prescribed ERAs and aggregate environmental scores)

This clause amends Schedule 2 to correct provisions relating to the environmentally relevant activity for boat maintenance and repair (ERA 49).

In 2012, the Department of Environment and Heritage Protection undertook a review of ERA 49 and identified certain aspects that should no longer be regulated. The aspects of this ERA that must be retained relate to

operations occurring adjacent to waterways as there is greater potential for contamination of waters in these locations.

Amendments were made in the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2013* but the change was incorrectly made to subsection (2) instead of subsection (1). This regulation corrects that situation so that the relevant activity only applies where the activity is being carried out at a place which is within 50 metres of naturally occurring surface waters.

The term "naturally occurring surface waters" is currently defined in ERA 16 but is also used in the definition of ERA 49. This clause omits the definition for naturally occurring surface waters from ERA 16 and relocates it to the general dictionary so that the definition applies to both ERA 16 and ERA 49. Refer Clause 10.

Clause 7 Insertion of new sch 3B

This clause inserts a new Schedule 3B that lists approved eligibility criteria for environmentally relevant activities. Schedule 3B approves eligibility criteria for:

- geothermal exploration activities;
- petroleum exploration activities;
- petroleum pipeline activities; and
- petroleum survey activities.

If operators of these activities comply with the eligibility criteria they may make a standard application and will automatically receive standard conditions upon application without an assessment process. This supports the Greentape policy objectives to introduce a licensing model proportionate to environmental risk. Note - these documents also include the standard conditions for the above activities and will be made available on the departmental website.

Clause 8 Amendment of sch 10 (Fees)

This clause amends the schedule which lists payable fees under the *Environmental Protection Act 1994*. The amendment corrects an unintentional consequence of the previous drafting in the *Environmental Protection and Other Legislation Amendment Regulation (No.1) 2013*

whereby Schedule 10, part 3, item 8 states that the fee for an application for an environmental authority is \$551.00. Consequently, an environmental authority relating to a mining claim must now pay this application fee. This is an unintended consequence and it was never the intention of government to charge this fee for a mining claim activity.

This amendment corrects the drafting so that no fee is payable for applying to undertake these activities.

Clause 9 Amendment of sch 12 (Dictionary)

This clause makes a number of changes to the Dictionary as follows.

The definition of naturally occurring surface waters has been moved from Schedule 2 to Schedule 12 so that it can apply to ERA 16 and ERA 49. This is a technical correction. Both activities previously referenced 'naturally occurring surface waters'.

The definitions of eligibility ERA and ineligible ERA are omitted as they are already defined in the *Environmental Protection Act 1994*.

An error in the cross-reference to the definition of watercourse is corrected.

ENDNOTES

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