

Environmental Protection Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 129

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection Amendment Regulation (No. 1) 2015

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The objectives of the regulation are to amend the *Environmental Protection Regulation 2008* to:

- reduce regulatory burden by removing legislative provisions that are no longer required;
- improve efficiency in the payment of fees for amendment applications for environmental authorities;
- ensure the level of environmental regulation for meat processing operations is proportionate to environmental risks; and
- update terminology and references in the *Environmental Protection Regulation 2008*.

Achievement of policy objectives

The policy objectives are to be achieved by:

- providing for the deletion of contaminated land provisions after the commencement of contaminated land provisions in the *Environmental Protection and Other Legislation Amendment Act 2014* on 30 September 2015;
- implementing changes to streamline the process for the payment of fees for amendment applications;
- deregulating meat processing activities which pose a lower risk to the environment;

- updating the titles of ‘ERA Standards’ to refer to new versions; and
- updating out-dated terminology and references relating to dams to reflect terminology used in the new ‘Manual for Assessing Consequence Categories and Hydraulic Performance of Structures’.

Consistency with policy objectives of authorising law

The Amendment 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, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

These amendments will not add to the administrative cost of the Queensland Government.

The amendments to remove contaminated land provisions that will no longer be necessary and to update out-dated terminology and references to reflect the new ‘Manual for Assessing Consequence Categories and Hydraulic Performance of Structures’, are administrative amendments which are machinery in nature. They will not impact stakeholders, other than to provide greater clarity and consistency.

The amendment to deregulate lower risk meat processing activities will ensure the level of regulation and regulatory effort is proportionate to environmental risk. This will enable government resources to be focussed on activities which pose a higher risk to the environment which will benefit the community as a whole. It is estimated that there are only four to five facilities (lower risk meat processing operations) in Queensland that will be affected by this change, and these operators will be affected positively. This change will not have impacts on other operators—it will only ensure the regulatory approach is equitable. The Department of Environment and Heritage Protection (the department) will be positively impacted as it will no longer need to assess applications for these types of activities. While there will also be a loss of revenue to the government, this will not be particularly significant because of the limited number of low risk operators and the relatively low fees that apply to these operators.

The amendment of schedule 3B to update ERA Standards version numbers will not have any impacts on industry. Current environmental authority holders to which the ERA Standards apply will not be required to transition to the new ERA Standards. The changes to the ERA Standards are limited to the replacement of terms and no additional requirements will be imposed upon operators. The amendment will not impact upon the community – the level of environmental protection afforded by the ERA Standards will remain unchanged.

Consistency with fundamental legislative principles

Section 24(1)(i) of the *Legislative Standards Act 1992* was considered during the drafting of this regulation and the amendments are consistent with fundamental legislative principles.

Consultation

Consultation has been undertaken with the Office of Best Practice Regulation in determining that the amendments were excluded from the requirement to undertake a Regulatory Impact Statement.

Notes on Provisions

Clause 1 Short title

This clause states that the short title of this regulation is the *Environmental Protection Amendment Regulation (No. 1) 2015*.

Clause 2 Commencement

This clause states that the regulation commences on 30 September 2015.

Clause 3 Regulation amended

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

Clause 4 Omission of s 115C (Prescribed criteria—Act, s 568)

This clause deletes section 115C of the *Environmental Protection Regulation 2008*. Section 115C prescribed criteria for an auditor's certification of a contaminated land investigation document.

As part of the restructure of the provisions relating to contaminated land management in the *Environmental Protection and Other Legislation Amendment Act 2014*, these criteria are now content requirements for contaminated land investigation documents. In addition, the auditor's function (the auditor's certification) was also set out as part of those requirements. Consequently, section 568 of the *Environmental Protection Act 1994* was amended so that there is no longer a need to prescribe the criteria for this function in the regulation.

Clause 5 Omission of ss 135 and 136

Clause 5 deletes sections 135 and 136 of the *Environmental Protection Regulation 2008*. Sections 135 and 136 apply to major amendment applications where the applicant has either underpaid or overpaid the application fee, due to the calculation of 30% of the annual fee.

Under the *Environmental Protection and Other Legislation Amendment Act 2014*, the major amendment application fee and minor amendment application fee are being replaced with a single application fee and an assessment fee (for major amendment applications).

Consequently, sections 135 and 136 are no longer required because the administering authority will be informing the applicant of the amount of the assessment fee (i.e. the 30% of the annual fee that is paid for a major amendment).

These provisions are being transferred to transitional provisions, which will only apply to amendment applications made, but not yet decided, upon commencement of this Amendment Regulation.

Clause 6 Insertion of new ch 9, pt 10

This clause inserts new transitional provisions (sections 177 and 178) to continue existing sections 135 and 136 in effect where a major amendment application was made, but not decided, before sections 135 and 136 are deleted upon the commencement of the Amendment Regulation.

Section 177 (When shortfall in fee for particular major amendment application payable) ensures that a shortfall in the application fee can be recovered by the administering authority from the applicant if the application fee (prior to commencement) was insufficient due to the requirement to pay an additional fee for a major amendment application.

Section 178 (Refunding overpayment of fee for particular major amendment applications) ensures that the administering authority refunds the applicant an overpayment if the application fee (prior to commencement) was in excess of the fee required for a major amendment application.

Clause 7 Amendment of sch 2 (Prescribed ERAs and aggregate environmental scores)

This clause amends schedule 2 of the *Environmental Protection Regulation 2008* which describes prescribed environmentally relevant activities (ERAs) for the purposes of regulating those activities under an environmental authority. Specifically, section 25(2) (Meat Processing) is amended so that the exempt activities (i.e. those activities which are explicitly not captured by section 25) do not distinguish between meat processing activities in retail premises and the same sorts of meat processing activities carried out in wholesale premises.

This is achieved by removing the existing exemption for retail premises and replacing it with an exemption for the types of activities carried out in retail premises. That is, for the exemption to apply, the meat processing operation must not involve any of the following activities:

- Slaughtering animals; or
- Rendering the meat or meat products; or
- Release of waste to waters; or
- Treatment of waste using anaerobic or facultative systems.

If the operation involves any one or more of the listed activities, it will not fall within the exemption.

The removal of these operations from regulation as ERAs is the result of a review undertaken by the department in relation to the environmental risk posed by some lower risk meat processing activities that currently fall within the definition of ‘meat processing’ in this

section. The review identified that operations which involve the processing of animal carcasses into meat products but do not involve any higher risk components (i.e. slaughtering, rendering, releasing waste to waters or disposing liquid waste using anaerobic or facultative systems), do not pose sufficient risk of environmental harm to justify regulation as an ERA. These activities can still be subject to enforcement action if the carrying out of the activity fails to meet the general environmental duty and causes environmental harm.

The new drafting of this section will ensure that activities which were intended to be captured by the existing exemption (i.e. for processing meat or meat products in retail premises under section 25(2)(b)) will remain exempt, as these activities should not involve any of the abovementioned higher risk components.

Clause 8 Amendment of sch 3B (Approved eligibility criteria for environmentally relevant activities)

This clause amends schedule 3B of the *Environmental Protection Regulation 2008* which contains a list of ERA Standards made under section 318 of the *Environmental Protection Act 1994*. ERA Standards are a standard for the eligibility criteria and standard conditions for an ERA.

The department has made ERA Standards for ERAs for mining activities, petroleum activities, geothermal exploration and a range of prescribed ERAs. All of these ERA Standards refer to terms in the *Wild Rivers Act 2005*.

The *Wild Rivers Act 2005* was repealed in 2014 by the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*. The ERA Standards prescribed in schedule 3B have been updated to reflect this repeal. Specifically, the eligibility criteria and/or standard conditions in each of the ERA Standards prescribed in schedule 3B have been updated to replace terms from the repealed *Wild Rivers Act 2005* with equivalent terms in the *Regional Planning Interests Act 2014*. Definitions for new terms have also been inserted.

The new ERA Standards will ensure that the level of environmental protection afforded by the ERA Standards is maintained. This is significant in the context of the imminent expiry of transitional provisions for the repeal of the *Wild Rivers Act 2005* in section 715C of the *Environmental Protection Act 1994*. If the ERA Standards were not updated, standard conditions referring to terms from the *Wild Rivers Act 2005* would become unenforceable.

The *Environmental Protection Act 1994* provides that an amendment of an ERA Standard requires approval by a regulation (sections 318D to 318DA). Therefore, this amendment is required in order to prescribe the new updated versions of the ERA Standards.

Clause 9 Amendment of sch 5 (Environmental objective assessment)

This clause amends schedule 5 of the *Environmental Protection Regulation 2008* which sets out how an environmental objective assessment is done, and the environmental objectives and performance outcomes an environmental management decision are assessed against. This amendment replaces references to the now superseded 'Manual for assessing hazard categories and hydraulic performance of dams' with references to the new 'Manual for Assessing Consequence Categories and Hydraulic Performance of Structures'.

Clause 10 Amendment of sch 10 (Fees)

This clause amends schedule 10 of the *Environmental Protection Regulation 2008* which sets out the fees to be paid in specified circumstances.

Subsection (1) of this amendment replaces item 7 with new items 7 and 7A to give effect to a new process for the payment of fees for amendment applications for environmental authorities, by providing that one ‘application fee’ is applicable to all amendment applications (the current fee for minor amendment applications - \$295.60), and an additional ‘assessment fee’ is applicable to major amendment applications (this fee will be 30% of the relevant annual fee).

Currently, the *Environmental Protection Regulation 2008* (schedule 10, item 7) prescribes two different fees for: (a) minor amendment applications; and (b) major amendment applications. The fee for a minor amendment application is \$295.60, while the fee for a major amendment application is \$295.60 plus 30% of the annual fee for the authority that is the subject of the application. This has caused confusion since the application fee must be paid before the assessment level decision (ALD) is made, and the ALD is what determines whether the amendment is a minor or a major amendment.

Consequently, sections 120 and 121 of the *Environmental Protection and Other Legislation Amendment Act 2014* amended sections 228 and 229 of the *Environmental Protection Act 1994* to establish a new process whereby all applicants for an amendment application pay an ‘application fee’ (i.e. the current minor amendment fee in item 7(a)), and an additional ‘assessment fee’ (i.e. the current additional major amendment fee in item 7(b)) is payable only if the ALD determines that the amendment is a major amendment.

Sections 228 and 229 were amended by the *Environmental Protection and Other Legislation Amendment Act 2014* to provide that, if the ALD is that the amendment is a major amendment:

- the applicant must pay the ‘assessment fee’ prescribed by regulation (s 228); and
- the notice of the ALD is to state that the applicant must pay the ‘assessment fee’, and that the assessment of the application will not proceed until the assessment fee is paid (s 229).

Subsection (2) of this amendment deletes item 13 of schedule 10. This item currently prescribes a fee for the department to assess a site investigation report. As part of the changes made by the *Environmental Protection and Other Legislation Amendment Act 2014*, this assessment will now be done by an auditor as part of the auditor’s certification. Consequently, this fee is no longer required.

[Note: the department still has an administrative function with respect to updating the registers as a result of the submission of a contaminated land investigation report. This is why there is still an ability to prescribe a fee under section 390(5)(b) of the *Environmental Protection Act 1994*. However, there is no intention to prescribe a fee for this administrative function at this time.]

Clause 11 Amendment of sch 12 (Dictionary)

This clause amends schedule 12 of the *Environmental Protection Regulation 2008* which defines terms for the purposes of the Regulation. This amendment replaces the definitions for ‘high hazard dam’ and ‘significant hazard dam’ with new definitions for ‘high consequence dam’ and ‘significant consequence dam’.

The new ‘Manual for Assessing Consequence Categories and Hydraulic Performance of Structures’ has replaced the now superseded ‘Manual for assessing hazard categories and hydraulic performance of dams’. While the superseded manual referred to ‘significant hazard dams’ and ‘high hazard dams’, the new manual refers to ‘significant consequence dams’ and ‘high consequence dams’.

As a consequence of the introduction of the new manual and the new terminology, references in the *Environmental Protection Regulation 2008* to the ‘Manual for assessing hazard categories and hydraulic performance of dams’ and to ‘significant hazard dams’ and ‘high hazard dams’ are now out-dated and are replaced with references to the ‘Manual for Assessing Consequence Categories and Hydraulic Performance of Structures’, ‘significant consequence dams’ and ‘high consequence dams’.

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