Environmental Protection Amendment Regulation (No. 2) 2013

Explanatory Notes for SL 2013 No. 271

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection Amendment Regulation (No. 2) 2013.

Authorising law

The regulation is made under section 580 of the Environmental Protection Act 1994.

Policy objectives and the reasons for them

The regulation amends the *Environmental Protection Regulation 2008* to:

- prescribe conditions for small scale mining activities and define 'designated environmental areas' to support the definition of small scale mining activities, following reforms introduced by the *Mines and Other Legislation Amendment Act* 2013:
- remove the devolution of administering particular environmentally relevant activities (ERAs) for some local governments following reforms introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*; and
- make minor amendments to remove inconsistencies, set eligibility criteria and standard conditions, and insert a fee for a temporary emissions license.

Achievement of policy objectives

The policy objectives are achieved by inserting provisions that prescribe the conditions for small scale mining activities and defining "designated environmental areas", amending the provision for the devolution of particular environmentally relevant activities so administration of these activities is not devolved to some smaller local governments, and making other minor amendments.

Further details on the policy objectives and how each amendment achieves the policy objectives are provided in the Notes on Provisions below.

Consistency with policy objectives of authorising Act

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 other legislation

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

Alternative 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

This Amendment Regulation will provide certainty regarding rehabilitation and financial assurance requirements for small scale mining activity operators to meet the objectives of the *Mines and Other Legislation Amendment Act 2013*.

The amendment regulation makes 19 eligibility criteria for prescribed ERAs. These eligibility criteria will allow applicants to make a standard application for an environmental authority for these activities. Standard applications provide applicants certainty regarding the operational conditions and the application outcomes for an environmental authority.

The removal of the devolution of administering particular environmentally relevant activities (ERAs) for some local governments following reforms introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* will reduce administrative responsibilities and costs for local government.

Implementation will be achieved within current departmental budgets.

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 Amendment Regulation must be in subordinate legislation because the provisions being amended are in subordinate legislation.

Consultation

Consultation on the *Mines and Other Legislation Amendment Act 2013* occurred through the Agriculture, Resources and Environment Committee. Consultation on the development of the prescribed conditions and definition of designated environmental areas occurred with the Department of Natural Resources and Mines and small scale mining industry representatives.

In accordance with section 318 of the *Environmental Protection Act 1994*, the draft eligibility criteria and standard conditions for the 19 ERAs were published on the department's website for public scrutiny and the opportunity for all sectors of the community to make submissions and comment. The documents were published on 5 July 2013 and the submission period ended on 19 August 2013.

For the local government devolutions, consultation occurred as part of the Greentape Reduction project through a Draft Regulatory Assessment Statement (RAS) released for public consultation for six weeks. Following government approval of the deletions of ERAs local governments were notified of the possible proposal in a letter from the Director-General of EHP in leading up to the commencement of the Greentape Reduction amendments.

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*.

Notes on provisions

Clause 1 Short title

This clause states that the short title of this legislation is the *Environmental Protection Amendment Regulation (No. 2) 2013*.

Clause 2 Commencement

This clause states that clauses 6, 7 and 12 of this Amendment Regulation commence on 1 January 2014. The later commencement of these sections ensures the orderly transfer of responsibilities from local governments to the State for the removal of the devolution of administering particular environmentally relevant activities (ERAs) for some local governments.

Clause 3 Regulation amended

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

Clause 4 Amendment of s 16 (Meaning of concurrence ERA)

This clause inserts a new subsection to section 16 of the *Environmental Protection Regulation 2008* to exclude a mobile and temporary environmentally relevant activity (ERA) from being a "concurrence ERA".

This amendment is required to remove an inconsistency between the *Environmental Protection Regulation 2008* and the *Sustainable Planning Act 2009*. The *Environmental Protection Regulation 2008* currently allows an operation to be both a concurrence ERA and a mobile and temporary ERA, requiring an operator to obtain a development approval, even though under the *Sustainable Planning Act 2009* they cannot apply for a development approval because they are a mobile and temporary ERA.

Clause 5 Insertion of new ss 23 and 23A

This clause inserts new sections 23 and 23A into the *Environmental Protection Regulation* 2008

Section 23 prescribes a list of "designated environmental areas" to support the definition of *small scale mining activity* in schedule 4 of the *Environmental Protection Act 1994*. Subsections (a)(vi) and (b)(v) of schedule 4 state that small scale mining activities cannot be carried out in an area prescribed under a regulation as a "designated environmental area".

A list of "designated environmental areas" was developed based on the list of "category C environmentally sensitive areas" in the standard conditions which apply to environmental authorities for these types of mining activities.

Section 23A states that the conditions in schedule 2C are prescribed conditions for section 21A of the *Environmental Protection Act 1994*.

Clause 6 Amendment of s 101 (Particular prescribed ERAs)

This clause amends section 101 of the *Environmental Protection Regulation 2008* to limit the devolution of administration and enforcement responsibilities in relation to particular environmentally relevant activities (ERAs) to *prescribed local governments*. Prescribed local governments do not include local governments listed in the new schedule 8A inserted by this Amendment Regulation. The local governments listed in schedule 8A are those who had administration and enforcement responsibilities for 10 or less sites operating in their local area, and who elected to have the administration and enforcement of these ERAs returned to the State.

This amendment is a result of the Greentape Reduction project review of ERAs which saw the deletion of 20 ERAs from the *Environmental Protection Regulation 2008*; 11 of which were devolved to local government. During consultation on the review, local governments highlighted that the deletions would make maintenance of processes and systems for the administration of remaining devolved ERAs unviable for local governments that have few ERAs left to administer. Consequently, the Department of Environment and Heritage Protection wrote to each local government in Queensland and offered to take over the administration and enforcement of those ERAs for local governments who had 10 or less sites operating in their local area. Seventeen eligible local governments responded and these are listed in schedule 8.

Clause 7 Insertion of new ch 9, pt 8

This clause inserts new sections 174 and 175 into the *Environmental Protection Regulation* 2008 which provide the transitional arrangements for this Amendment Regulation.

Section 174 ensures that applications on foot at the time of the change of administration made by clause 6 of this Amendment Regulation continue to be decided by the relevant local government. Once the application has been decided, the devolution will cease and the matter will be administered by the State.

Section 175 ensures that payment of financial assurance under the prescribed conditions made by clause 5 and schedule 2C of this Amendment Regulation occurs within 30 business days after the commencement of this Amendment Regulation. This allows for operators to meet their financial assurance requirements.

Clause 8 Insertion of new schs 2B to 2D

This clause inserts new schedules 2B to 2D into the *Environmental Protection Regulation* 2008.

Schedule 2B provides the list of agricultural research facilities referred to in the list of "designated environmental areas" as per section 23 of the *Environmental Protection Regulation* 2008.

Schedule 2C provides prescribed conditions for small scale mining activities to establish the requirements for rehabilitation and financial assurance. This schedule is divided into 2 parts:

- Part 1 includes definitions for this schedule
- Part 2 sets conditions for mining claims and exploration permits; and
- Part 3 sets conditions for exploration permits (minerals).

Part 1 of schedule 2C introduces four definitions (for 'dam', 'density of cover', 'Guidelines for Livestock Drinking Water' and 'water bore') to support the prescribed conditions inserted in schedule 2C.

- The definition of 'dam' will ensure that only man made dams used for the purposes of the mining activity must be rehabilitated (excluding for example naturally occurring water holes).
- The definition of 'density of cover' provides small scale mining tenure holders the
 parameters for rehabilitation when dealing with trees and shrubs and understorey
 species.
- The definition of 'Guidelines for Livestock Drinking Water' is a reference to the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000.
- The definition of 'water bore' ensures that water bores are rehabilitated to meet the requirements of the *Water Act 2000*.

The conditions in Part 2 of schedule 2C ensure that:

- rehabilitation occurs before the relevant tenure expires or is surrendered;
- rehabilitation occurs progressively;
- the landform is left in a safe, stable and self-sustaining manner with vegetation similar to surrounding undisturbed areas;
- if infrastructure is left on site (for example a dam or a road), it is left with written agreement from the land owner;

- any dam that remains on site to be used for livestock drinking water supply provides safe water quality and access; and
- financial assurance must be paid before the activity commences
- financial assurance must be for the amount set in the table provided in schedule 2D for small scale mining tenure holders who have not paid a financial assurance amount before 31 March 2013.

Conditions 9 and 10 combined ensure that, for small scale mining tenure holders who held an environmental authority for the activity carried out under the tenure on 31 March 2013 and have paid an amount of financial assurance for that environmental authority, the amount of financial assurance they must pay is the same as the amount they have already paid. This ensures that small scale mining tenure holders meet section 712(2) of the *Environmental Protection Act 1994* and are not required to change the amount of financial assurance they have already paid, retaining the status quo for existing operators.

Part 3 refers to rehabilitation requirements relevant to exploration permits (minerals) only which relate to drill pads and drill hole rehabilitation.

Schedule 2D provides the rates of financial assurance which must be paid before the small scale mining activity commences under the relevant mining tenure. The amounts set in this schedule are based on the type of tenure (mining claim or exploration permit (mineral)), the environmental risk of the activity, and the area of disturbance proposed by the operator. The operator provides the Department of Natural Resources and Mines the area of disturbance as part of their "work program" or "program of works". Setting the area of disturbance in accordance with an operator's current work program will give the ability to change the financial assurance if the area of disturbance changes when work programs are reviewed or renewed under the *Mineral Resources Act 1989*.

Clause 9 Amendment of sch 3 (Continued codes of environmental compliance—Act, s 707A)

This clause amends schedule 3 of the *Environmental Protection Regulation 2008*, which lists continued "codes of environmental compliance" for certain environmentally relevant activities (ERAs), to remove the "Code of environmental compliance for certain aspects of extractive and screening activities (ERA 16)—Version 7". This amendment is necessary because Clause 10 below makes a new set of eligibility criteria for ERA 16 making the continued code unnecessary.

The "Code of environmental compliance for certain aspects of sewage treatment plants (ERA 63)" is retained because the code applies only to threshold 2 (sewage pumping stations) of this ERA. The new eligibility criteria for ERA 63 added to Schedule 3B below applies to threshold 1 for this ERA, which relates to operating sewage treatment works with total daily peak design capacity of 21–100 equivalent persons if treated effluent is discharged to an infiltration trench or through an irrigation scheme.

Clause 10 Amendment of sch 3B (Approved eligibility criteria for environmentally relevant activities)

This clause amends schedule 3B of the *Environmental Protection Regulation 2008*, which lists approved eligibility criteria for environmentally relevant activities (ERAs). This clause inserts 19 new eligibility criteria to schedule 3B for prescribed ERAs including small sewage treatment plants, quarries, poultry farms and meat processing.

The eligibility criteria and standard conditions for ERA 63 are only for one aspect of this activity, being the operation of sewage treatment works with total daily peak design capacity of 21–100 equivalent persons if treated effluent is discharged to an infiltration trench or through an irrigation scheme. The code of environmental compliance in schedule 3 is for a different aspect of ERA 63, being the operation of sewage pumping stations (threshold 2 of ERA 63).

Clause 11 Amendment of sch 5 (Environmental objective assessment)

This clause amends schedule 5, which sets out how an environmental objective assessment is completed and the criteria for the assessment. This amendment corrects a grammatical error to schedule 5, part 2, item 7(f) of the *Environmental Protection Regulation 2008*.

Clause 12 Insertion of new sch 8A

This clause inserts a new schedule 8A into the *Environmental Protection Regulation 2008*. Schedule 8A lists the local governments who requested the removal of the devolution in regards to administration and enforcement responsibilities for devolved environmentally relevant activities. This schedule lists the local governments which are not a 'prescribed local government' under section 101 of the *Environmental Protection Regulation 2008*.

Clause 13 Amendment of sch 10 (Fees)

This clause amends schedule 10 of the *Environmental Protection Regulation 2008* to set a fee of \$2,200 for a temporary emissions licence. This fee is based on the recovery of costs incurred through assessment and administration of the licence. The temporary emissions licence was introduced into legislation by the *Economic Development Act 2012* in response to the recommendations made by the Queensland Floods Commission of Inquiry report. The licence can be applied for where conditions of an environmental authority or development approval need to be temporarily relaxed or modified to respond to an unexpected event. Section 357B(5) of the *Environmental Protection Act 1994* provides a head of power for the amount of the application fee to be prescribed by the *Environmental Protection Regulation 2008*.

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