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**ENVIRONMENT PROTECTION AUTHORITY
NSW**

ENVIRONMENTALLY HAZARDOUS CHEMICALS ACT 1985

**CHEMICAL CONTROL ORDER TO IMPLEMENT ARTICLES 5(6) AND
7(2) OF THE MINAMATA CONVENTION ON MERCURY**

Commencement date: 14 February 2022

I, Tracy Mackey, Chief Executive Officer of the NSW Environment Protection Authority, in pursuance of sections 11 and 22 of the Environmentally Hazardous Chemicals Act 1985, by this order prohibit certain prescribed activities in respect of mercury and mercury compounds, being declared chemical wastes under that Act.

Title

1. This order may be cited as the Minamata Convention on Mercury Chemical Control Order 2022.

Definitions

2. In this order:
 - 2.1 *Act* means the Environmentally Hazardous Chemicals Act 1985.
 - 2.2 *Artisanal and small-scale gold mining* means gold mining conducted by individual miners or small enterprises with limited capital investment and production.
 - 2.3 *Authority* means the Environment Protection Authority established under the *Protection of the Environment Administration Act 1991* (NSW).
 - 2.4 *Chemical* means any chemical element or any chemical compound or complex, whether of known or unknown or variable or invariant composition, by whatever means created, discovered or obtained, including any such element, compound or complex that is a complex reaction product or a component of any mixture or that may be characterised as biological material, and includes:
 - (a) mercury, and
 - (b) mercury compounds.
 - 2.5 *Chemical waste* means a chemical substance that is likely to be stored in accumulating deposits or dumped or abandoned or discharged.
 - 2.7 *Convey*, in relation to a chemical or chemical waste, includes carry, load, unload, transfer, transmit, pump and discharge the chemical.
 - 2.8 *Discharge*, in relation to a chemical or chemical waste, means the act of emitting or releasing to the environment.
 - 2.9 *Mercury* means elemental mercury (Hg(0), CAS No. 7439-97-6).

2.10 *Mercury compound* means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions.

2.11 *New facility* means a facility that uses any of the manufacturing processes listed in Schedule A of this order and that prior to the date of commencement of this order:

- (a) did not exist for the purpose of using any of the processes listed in Schedule A, or
- (b) existed for the purpose of using any of the processes listed in Schedule A and had ceased using those processes.

2.12 *Prescribed activity*, in relation to a chemical or a chemical waste, means the act of manufacturing, processing, keeping, distributing, conveying, using, selling or disposing of the chemical waste or any act related to any such act.

Authority to make the order

- 2 This order is made by the Authority under section 11 of the Act. It gives effect to Articles 5(6) and 7(2) of the Minamata Convention on Mercury and applies to the whole of New South Wales.
- 3 Notice is hereby given under section 21 of the Act.
- 4 This order is made following the declaration on 3 December 2021 of mercury and mercury compounds as chemical wastes under s 10 of the Act.
- 5 This order is made with the consent of the Minister for Energy and Environment in accordance with requirements under s 22(2) of the Act.
- 6 This order will implement the Minamata Convention on Mercury and is necessary to prevent or minimise any adverse effects of mercury on the environment.

Commencement

- 7 This order commences on 14 February 2022, which is not earlier than 30 days from the date of publication of this order.
- 8 Where this order is subject to an appeal under Part 6 of the Act, it shall have no effect before the Court's determination of the appeal or until the appeal is withdrawn.

Terms of the order – Prohibition of prescribed activities

- 9 The use of mercury or mercury compounds in a new facility is prohibited.
- 10 The use of mercury and mercury compounds in artisanal and small-scale gold mining and processing is prohibited.
- 11 The discharge of mercury and mercury compounds from artisanal and small-scale gold mining and processing is prohibited.

Complying with this order

- 12 It is an offence under the Act to carry on a prescribed activity prohibited under this order.
- 13 Where there is any inconsistency between this order and a condition contained in an environment protection licence issued under the *Protection of the Environment Operations Act 1997*, the more stringent requirement will prevail.

SCHEDULE A – MANUFACTURING PROCESSES AT NEW FACILITIES

- Chlor-alkali production
- Acetaldehyde production in which mercury or mercury compounds are used as a catalyst
- Vinyl chloride monomer production
- Manufacturing processes using mercury as electrodes, including sodium or potassium methylate or ethylate production



TRACY MACKEY
CHIEF EXECUTIVE OFFICER
NSW ENVIRONMENT PROTECTION AUTHORITY