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Environment Protection Authority

Environmental Management Calculation Protocol

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This protocol sets out the method the EPA uses to determine the environmental management category allocated to holders of environment protection licences under the *Protection of the Environment Operations Act 1997*.

About this document

This document is the Environmental Management Calculation Protocol (the Protocol) referred to in Section 25 of the Protection of the Environment Operations (General) Regulation 2022 (the General Regulation).

The Protocol sets out the matters and methods the NSW Environment Protection Authority (EPA) will use to determine the environmental management category allocated to holders of environment protection licences issued under the *Protection of the Environment Operations Act 1997* (POEO Act).

The environmental management category will be used to calculate the administrative fee to be paid by environment protection licensees in accordance with Section 24 of the General Regulation.

The EPA may vary or replace the Protocol from time to time by notice in the *NSW Government Gazette*. This Protocol, or any variation of it, takes effect from the date it is published in the *NSW Government Gazette*.

Glossary

Term	Definition
Clean up notices	Are as set out in Part 4.2 of the POEO Act.
Enforceable undertakings	As referred to in this Protocol are set out in section 253A of the POEO Act. Enforceable undertakings in relation to the <i>Waste Avoidance and Resource Recovery Act 2001</i> , <i>Environmentally Hazardous Chemicals Act 1985</i> and the <i>Ozone Protection Act 1989</i> are excluded from the operation of this Protocol.
Environmental improvement programs	Are pollution reduction programs (under section 68 of the POEO Act) that have been initiated by the licensee by way of an application made to the EPA to vary their licence under section 58(3) of the POEO Act. The environmental improvement programs must be programs outside of those required to achieve compliance with legislative requirements under the POEO Act or Regulations or any existing conditions on the licence at the time that the environmental improvement program is added to the licence.
Environmental Management Calculation Protocol (this document)	Sets out the matters and methods the EPA will use to determine the environmental management category allocated to holders of licences issued under the POEO Act.
Environmental management category (A, B, C, D or E)	Is allocated to a licence holder based on the licence holder's performance in managing environmental risks associated with the licensed activity. The environmental management category is used to calculate the administrative fee in accordance with Section 24 of the General Regulation.
Environmental management factors	Are listed in the table in Section 24 of the General Regulation (and reproduced as Table 1 of this Protocol). Environmental management factors are the multipliers corresponding to each environmental management category and are used to calculate the licence administrative fee.
Environmental management score	Is based on licensee compliance history/EPA regulatory response associated with the licensed activity, calculated using the methodology set out in section 3.1 of this Protocol. The environmental management score is the sum of the yearly regulatory score over three years.
Environmental management systems and practices	Means an environmental management system certified to ISO 14001, and any other systems and practices listed in Table 4 of this Protocol.
Environmental management weighting	Listed in Table 2 of this Protocol, is linked to regulatory actions taken over the past three years and reflects the significance of the regulatory action taken. The weighting is used to calculate the environmental management score.
Formal warnings	Are formal warnings issued for any suspected or potential contravention of the POEO Act or Regulations, including the suspected or potential commission of an offence under the POEO Act or Regulations. Formal warnings issued for any suspected or potential contravention of the <i>Waste Avoidance and Resource Recovery Act 2001</i> , <i>Environmentally Hazardous Chemicals Act 1985</i> and the <i>Ozone Protection Act 1989</i> are excluded from the operation of this Protocol.
General Regulation	Is the Protection of the Environment Operations (General) Regulation 2022 as in force from time to time.

Term	Definition
Inspections – incident related	<p>Are inspections in response to:</p> <ol style="list-style-type: none"> a. an incident b. a verified complaint (being a complaint that is verified by the EPA or the licence holder as being directly attributable to the licensed premises) or c. non-compliance with licence conditions or legislative requirements under the POEO Act or Regulations. <p>It includes:</p> <ul style="list-style-type: none"> • follow-up inspections determined by the EPA to be related to the incident, verified complaint or non-compliance. • instances where the EPA becomes aware of or identifies an incident while at the licensed premises.
Mandatory environmental audits	Are as set out in Part 6.2 of the POEO Act.
Official cautions	<p>Are official cautions issued to a licensee for any offence under the POEO Act or Regulations. Official cautions issued for offences under the <i>Waste Avoidance and Resource Recovery Act 2001</i>, <i>Environmentally Hazardous Chemicals Act 1985</i> and the <i>Ozone Protection Act 1989</i> are excluded from the operation of this Protocol. Official cautions for late or non-submission of an annual return are not included in this regulatory action for the purposes of this Protocol.</p>
Official cautions for late or non-submission of an annual return	Are official cautions issued to a licensee for the late or non-submission of an annual return, the requirement of which is included as a licence condition under section 64 of the POEO Act.
Penalty notices – Category 1	<p>Are penalty notices issued by the EPA for the offences under the following sections of the POEO Act:</p> <ul style="list-style-type: none"> s 48 Failure to hold a licence – licensing requirement – scheduled activities (premises-based) s 49 Failure to hold a licence – licensing requirement – scheduled activities (not premises-based) s 64 Failure to comply with condition except for the late or non-submission of an annual return s 91 Failure to comply with clean-up notice by occupiers or polluters s 97 Failure to comply with prevention notice s 120 Prohibition of pollution of waters s 128 Standards of air impurities not be exceeded s 142A Pollution of land s 143 Unlawful transporting of waste (asbestos or hazardous waste) s 144 Use of land as waste facility without lawful authority s 144AAA Unlawful disposal of asbestos waste s 144AAB Re-use and recycling of asbestos waste <p>and penalty notices issued by the EPA for the offences under the following clause of the Protection of the Environment Operations (Waste) Regulation 2014:</p> <ul style="list-style-type: none"> cl 71 Application of proximity principle to transportation in course of business. <p>Penalty notices – Category 1 do not include penalty notices that have been issued but subsequently withdrawn under s 228 of the POEO Act.</p>

Term	Definition
Penalty notices – Category 2	<p>Are all penalty notices issued by the EPA for offences prescribed by schedule 6 of the General Regulation not categorised as penalty notices – category 1, with the exception of penalty notices in relation to offences under the <i>Environmentally Hazardous Chemicals Act 1985</i> and the <i>Ozone Protection Act 1989</i>. Penalty notices for late or non-submission of an annual return are not included in this regulatory action for the purposes of this Protocol.</p> <p>Penalty notices – Category 2 do not include penalty notices that have been issued but subsequently withdrawn under s 228 of the POEO Act.</p>
Penalty notices for late or non-submission of an annual return	<p>Are penalty notices that are issued for the late or non-submission of an annual return, the requirement of which is included as a licence condition under section 64 of the POEO Act.</p> <p>Penalty notices for late or non-submission of an annual return do not include penalty notices that have been issued but subsequently withdrawn under s 228 of the POEO Act.</p>
POEO Act	<i>Protection of the Environment Operations Act 1997.</i>
Pollution reduction programs	<p>Are, for the purposes of this Protocol, programs initiated or directed by the EPA to carry out works or to install plant for the purposes of preventing, controlling, abating or mitigating pollution. Pollution reduction programs are imposed on a licensee by the EPA by way of a licence condition under section 68 of the POEO Act.</p>
Prevention notices	Are as set out in Part 4.3 of the POEO Act.
Regulations	Are any Regulations made under the POEO Act, as in force from time to time.
Successful prosecutions	<p>Are where:</p> <ol style="list-style-type: none"> a. a licensee; or b. a director or directors of a company that holds a licence <p>has/have been convicted of an offence under the POEO Act and Regulations. Tier 1 prosecutions are as set out in Part 5.2 of the POEO Act and for the purposes of this Protocol do not include prosecutions for offences under the <i>Ozone Protection Act 1989</i>. Tier 2 prosecutions are as defined in section 114 of the POEO Act, and for the purposes of this Protocol do not include prosecutions for offences under the <i>Waste Avoidance and Resource Recovery Act 2001</i>, <i>Environmentally Hazardous Chemicals Act 1985</i> and the <i>Ozone Protection Act 1989</i>.</p> <p>Successful prosecutions include prosecutions for offences for which a penalty notice was issued but subsequently withdrawn by the EPA under s 228 of the POEO Act but do not include ‘Successful prosecutions – Court elected penalty notice – Category 1’, ‘Successful prosecutions – Court elected penalty notice – Category 2’ or ‘Successful prosecutions – Court elected penalty notice for late or non-submission of an annual return’.</p>
Successful prosecutions – Court elected penalty notice – Category 1	Are where a licensee has chosen to contest a penalty notice – category 1 in court and has subsequently been convicted of the offence.
Successful prosecution – Court elected penalty notice – Category 2	Are where a licensee has chosen to contest a penalty notice - category 2 in court and has subsequently been convicted of the offence.

Term	Definition
Successful prosecutions – court elected penalty notice for late or non-submission of an annual return	Are where a licensee has chosen to contest a penalty notice for late or non-submission of an annual return in court and has subsequently been convicted of the offence.
Suspension of licence	As set out in section 79 of the POEO Act.
Total environmental management score	Is calculated using the methodology set out in section 3.3 of this Protocol. The total environmental management score is the environmental management score minus the total environmental management score reduction. The total environmental management score is compared to threshold values set out in Table 6 at section 3.4 of this Protocol to determine the environmental management category.
Total environmental management score reduction	Is calculated using the methodology set out in section 3.2. of this Protocol. The environmental management score reduction is based on environmental management systems and practices a licensee has in place, and any environmental improvement programs initiated by the licensee. The total environmental management score reduction is deducted from the environmental management score.
Year 1	Is the most recent licence reporting period (this is generally a 12-month period).
Year 2	Is the licence reporting period prior to year 1.
Year 3	Is the licence reporting period prior to year 2.
Yearly regulatory score	Is calculated using the methodology set out in section 3.1 of this Protocol. The yearly regulatory score is based on a licensee’s compliance history for each year considered as part of the risk assessment. The yearly regulatory score is used in calculating the environmental management score.

1. Overview of the EPA's risk-based licensing system

The EPA's risk-based licensing system aims to ensure all licensees receive an appropriate level of regulation based on the level of risk they pose.

The EPA will assess the site-specific risks posed by a licensed premises and identify any environmental issues that a licensee needs to address and where the EPA needs to focus its regulatory attention.

The risk assessments will consider three components:

1. the day-to-day operations at the site, assessing the types of environmental media relevant to the premises (air, odour, water and noise emissions)
2. the pollutant incident risk at the premises
3. the environmental management performance of the licensee.

During the assessment of the first two components, the EPA will take into account:

- the type and nature of emissions from the premises
- pollution control measures used at the premises
- proximity to sensitive environments and receptors (including residences)
- level of sensitivity of environment and receptors.

The third component of the assessment examines the environmental management performance of the licensee. The EPA will take into account:

- a licensee's environmental performance associated with the licensed activity based on their compliance history
- the regulatory actions the EPA has taken to respond to incidents and non-compliances
- environmental management systems and practices the licensee has in place to control and mitigate environmental risks
- environmental improvement programs initiated by the licensee.

Based on this assessment, a licensee will be allocated an environmental management category (EMC): A, B, C, D or E for each licence.

Where a licensee holds more than one licence, an EMC will be allocated to each licence based on regulatory actions and environmental management performance at the premises covered by that licence.

The results from each of the three components of the risk assessment will be used to determine the environmental risk level for each licence, and each licence will be allocated to one of three risk levels: levels 1, 2 or 3 (with level 3 being the highest risk).

The risk assessments will inform the level and type of EPA regulatory intervention required; for example, a higher risk level may result in more intensive monitoring and reporting obligations on the licence.

Overall environmental risk level 1, 2 or 3

Day-to-day operations

- Air/odour
- Water
- Noise

Pollution incident risk

Environmental management

- Enforcement history
 - Regulatory actions
 - Environmental management systems, practices and improvements
- Environmental management category allocated: A, B, C, D, E

- Types and nature of emissions
- Pollution control measures
- Proximity to sensitive environments/receptors
- Level of sensitivity of environments/receptors

The environmental management categories (A, B, C, D or E) allocated to the licensees as part of the third component of the risk assessment process will also be used to calculate licence administrative fees.

The EPA will determine environmental management categories in accordance with this Protocol.

2. Calculation of licence administrative fees

The General Regulation prescribes licence administrative fees for holders of environment protection licences. Section 24 in combination with Schedule 1 of the General Regulation prescribes these fees based on the type of activity (fee-based activities) and the scale of these activities.

Under Section 24 of the General Regulation the administrative fee for each licence will be calculated based on the type of activity (fee-based activities), the scale of these activities, and the environmental management category determined for each of the licensed activities. The environmental management category allocated to a licensee for the licensed activities corresponds with an environmental management factor. These factors are set out in the table to Section 24 (and in Table 1 of this Protocol). The environmental management factor acts as a multiplier to the administrative fee, resulting in a decrease, increase or no change to the licence administrative fee.

Licensees who perform well and minimise environmental risk will be rewarded with a reduction of their administrative fees. Poor performing licensees will pay licence fees that provide them with an incentive to improve their performance.

Section 24 of the General Regulation sets out a three-step process for calculating the administrative fee:

Step 1: Calculation of administrative fee units

Multiply the amount of one administrative fee unit for the relevant licence fee period by:

- the number of administrative fee units specified in Schedule 1 to the General Regulation for the activity authorised or controlled by the licence, or
- if the licence authorises or controls more than one activity, the greatest number of administrative fee units specified in Schedule 1 for those activities.

Step 2: Determination of the environmental management category

Determine the environmental management category in accordance with this Protocol.

Step 3: Calculation of administrative fee

Multiply the amount calculated in Step 1 by the environmental management factor for the applicable environmental management category (Step 2).

Table 1: Environmental management categories and corresponding environmental management factors*

Environmental management category	Environmental management factor
A	0.95
B	1
C	1.3
D	1.6
E	2

*Environmental management factors prescribed in Section 24 of the Protection of the Environment Operations (General) Regulation 2022.

For the first reporting period of the licence (Section 24(2)(b) of the General Regulation) and for the transport of trackable wastes, only Step 1 will apply for the purposes of calculating the administrative fee.

3. Determining the environmental management category

The EPA will determine the environmental management category for each licensee in accordance with this Protocol based on the following criteria and methodology.

3.1. Calculating the environmental management score based on licensee compliance history/regulatory response

Table 2 sets out the regulatory actions that may be undertaken by the EPA in relation to a licensee's operations, and the environmental management weighting corresponding to that

regulatory action based on how long ago the regulatory action occurred. The environmental management weighting is based on a licensee's performance associated with the licensed activities over the past three years.

Regulatory actions taken in the most recent reporting period (i.e. in the past 12 months) will be weighted more heavily than those actions taken in the two years prior. This is reflected in the environmental management weighting, where it is reduced by 50% and 90% where the action occurred in the second and third years, respectively.

Where a regulatory action taken by the EPA is withdrawn, discontinued, revoked, or otherwise ceases to have legal effect, the EPA may adjust a licensee's environmental management score for the licence fee period in which the regulatory action took place, and subsequent licence fee periods where necessary. Any necessary adjustment to the environmental management score and environmental management category may be backdated to the licence fee period in which the regulatory action took place. Where required, the EPA may refund licence administrative fees as a result of the adjustment.

Table 2: Regulatory actions, criteria considered and corresponding environmental management weightings

Regulatory actions	Criteria considered	Environmental management weighting
Successful prosecutions Tier 1	Number in year 1	500
	Number in year 2	250
	Number in year 3	50
Successful prosecutions Tier 2	Number in year 1	360
	Number in year 2	180
	Number in year 3	36
Successful prosecutions – Court elected penalty notice – Category 1	Number in year 1	130
	Number in year 2	65
	Number in year 3	13
Successful prosecutions – Court elected – Category 2	Number in year 1	100
	Number in year 2	50
	Number in year 3	10
Successful prosecutions – court elected penalty notice – late or non-submission of an annual return	Number in year 1	70
	Number in year 2	35
	Number in year 3	7
Enforceable undertakings	Number in year 1	150
	Number in year 2	75
	Number in year 3	15
Suspension of licence	Number issued in year 1	130
	Number issued in year 2	65
	Number issued in year 3	13
Mandatory environmental audits	Number required in year 1	130
	Number required in year 2	65
	Number required in year 3	13

Regulatory actions	Criteria considered	Environmental management weighting
Penalty notices – category 1 ¹	Number issued in year 1	120
	Number issued in year 2	60
	Number issued in year 3	12
Penalty notices – category 2 ²	Number issued in year 1	90
	Number issued in year 2	45
	Number issued in year 3	9
Penalty notices for late or non-submission of an annual return	Number issued in year 1	60
	Number issued in year 2	30
	Number issued in year 3	6
Official cautions	Number issued in year 1	60
	Number issued in year 2	30
	Number issued in year 3	6
Official cautions for late or non-submission of an annual return	Number issued in year 1	30
	Number issued in year 2	15
	Number issued in year 3	3
Formal warnings	Number issued in year 1	40
	Number issued in year 2	20
	Number issued in year 3	4
Clean-up notices	Number issued in year 1	90
	Number issued in year 2	45
	Number issued in year 3	9
Prevention notices	Number issued in year 1	90
	Number issued in year 2	45
	Number issued in year 3	9
Pollution reduction programs	Number required in year 1	70
	Number required in year 2	35
	Number required in year 3	7
Site inspections – incident related	Number in year 1	20
	Number in year 2	10
	Number in year 3	2

3.2. Consideration of years 1, 2 and 3 in determining the environmental management score

The ‘trend’ in EPA regulatory actions and a licensee’s performance over a three-year period is considered when determining the environmental management score for licensee compliance

¹ For the purposes of Table 2, Penalty notices – category 1 does not include penalty notices that are court elected.

² For the purposes of Table 2, Penalty notices – category 2 does not include penalty notices that are court elected.

history/EPA regulatory response. Where there is a history of poor environmental performance, all regulatory actions for the previous three years will be included in the environmental management category calculation. Conversely, where regulatory action is taken in year 3 only (for example), this is not considered to be indicative of a pattern of poor performance - therefore that regulatory action is not included in the environmental management category calculation.

Table 3 specifies when regulatory actions will be included in the environmental management category calculation.

Table 3: Consideration of ‘trend’ in EPA regulatory actions over a three-year period

Regulatory action taken			Circumstances in which regulatory action is included in the environmental management calculation
Year 1	Year 2	Year 3	
X	X	X	Regulatory action taken in each of the past three years. This indicates a history of poor environmental management performance. All regulatory actions taken in years 1, 2 and 3 are included in the environmental management category calculation.
X	X		Regulatory action taken in each of the past two years. This indicates a trend to poor environmental management performance. All regulatory actions taken in years 1 and 2 are included in the environmental management category calculation.
X			Regulatory action taken in the most recent reporting period indicating poor environmental management performance. This is not considered to be indicative of a pattern of poor performance. All regulatory actions taken in year 1 are included in the environmental management category calculation.
X		X	Regulatory action taken in the most recent reporting period, but no action taken in the period immediately prior to that. This is not considered to be indicative of a pattern of poor performance. Only the regulatory actions taken in year 1 are included in the environmental management category calculation. The regulatory action in year 3 is not included in the environmental management category calculation.
	X	X	No regulatory action taken in the most recent reporting period, but actions taken in the two periods immediately prior to that. This indicates improving environmental management performance. All regulatory actions taken in years 2 and 3 are included in the environmental management category calculation.
	X		No regulatory action taken in the most recent reporting period, but actions taken in the period immediately prior to that. This is not considered to be indicative of a pattern of poor performance. No regulatory actions taken in year 2 are included in the environmental management category calculation.
		X	No regulatory action taken in the two most recent reporting periods, but action taken in the period immediately prior to those. This indicates improved environmental management performance. No regulatory actions taken in year 3 are included in the environmental management category calculation.
			No regulatory action taken in the past three years. This indicates good environmental management performance.

For each year considered, the yearly regulatory score will be calculated – based on the criteria and weightings outlined in **Table 2** – as follows:

Number of regulatory action(s)	x	Environmental management weighting	=	Yearly regulatory score
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Each yearly regulatory score will then be added to determine the environmental management score for a licensee’s compliance history and EPA regulatory response, in accordance with **Table 3**.

Yearly regulatory score for year 1	+	Yearly regulatory score for year 2	+	Yearly regulatory score for year 3	=	Environmental management score
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3.3. Calculating the total environmental management score reduction

The total environmental management score reduction is based on the:

- environmental management systems and practices a licensee has in place (listed in **Table 4**), and
- environmental improvement programs specified in the licence.

3.3.1. Licensee environmental management systems and practices

Where a licensee has implemented environmental management systems and practices for a licensed activity, they will receive a reduction from their total environmental management score. The environmental management systems and practices form one component of the total environmental management score reduction.

The calculation method for determining this score reduction is set out in **Table 4**. Where a ‘No’ response is recorded, a nil score is applied. The score reduction is applied for every year in which environmental management systems and practices are in place.

Table 4: Licensee environmental management systems and practices and corresponding score reductions

Licensee environmental systems and practices	Score reduction for 'Yes' response
Does the licensee have an ISO 14001 certified environmental management system (EMS) or any other system that the EPA considers is equivalent?	
If yes:	
Has the licensee conformed to their EMS or have licensees rectified all environmental related non-conformances with the EMS?	80
Has the licensee had environmental-related non-conformances with the EMS that have not been rectified?	60
<p>Note: An equivalent system means an environmental management system that the EPA considers is equivalent to the accountability, procedures, documentation and record keeping requirements of an ISO 14001 certified system.</p>	
If the licensee does not have an ISO 14001 certified environmental management system or any other system that the EPA considers is equivalent, the following questions should be answered in relation to any documented environmental practices, procedures and systems in place:	
Has the licensee assessed their activities/operations to identify the aspects that have a potential to cause environmental impacts, and implemented operational controls to address these aspects?	18
Has the licensee established and implemented an operational maintenance program including preventative maintenance?	12
Does the licensee keep records of regular inspections and maintenance of plant and equipment?	6
Does the licensee conduct regular environmental audits at the premises that are undertaken by a competent person?	7
<p>Notes:</p> <p>Regular means conducted at least once every 12 months.</p> <p>A competent person is someone who acts in accordance with the principles of auditing as set out in clauses 4 and 7.2 of AS/NZS ISO 19011:2019 – Guidelines for auditing management systems.</p>	
Has the licensee engaged a third party to conduct an independent audit of the documented environmental practices, procedures and systems in place?	2
Does the licensee have an established and implemented environmental improvement or management plan?	12
Are staff trained in environmental issues that may arise from the licensee's activities/operations and are records of training kept?	3

3.3.2. Environmental improvement programs

The licensee may choose to enter into an environmental improvement program for the licensed activities. The environmental improvement programs must be agreed to between the licensee and the EPA. The environmental improvement program details are attached as a condition to the licence and must be programs outside of those required to achieve compliance with legislative requirements or any existing conditions on the licence as applying at the time the environmental improvement program is entered into.

The licensee must apply to the EPA for a licence variation in order for the programs to be included on the licence, and provide the following information:

- description of program, including costs
- proposed completion date
- key reporting milestones
- details of expected environmental improvements.

The calculation method for determining the reduction to the environmental management score for environmental improvement programs is set out in **Table 5**. The score reduction is applied in the next licence fee period. The score reduction applies for each environmental improvement program entered into, in accordance with **Table 5**.

The EPA may remove the environmental improvement program from the licence if the key milestones or any other conditions of the environmental improvement program are not met.

If the environmental improvement program is removed from the licence, the EPA will add an amount equivalent to the total score reduction received for the environmental improvement program, on to the environmental management score for the following licence-fee period.

Table 5: Score reduction for environmental improvement programs

Action	Criteria considered	Score reduction
Environmental improvement programs	Number put in place in year 1	70
	Number put in place in year 2	35
	Number put in place in year 3	7

3.3.3. Calculation of total environmental management score reduction

The total environmental management score reduction is calculated as follows:

Licensee environmental management systems and practices score reduction	+	Environmental improvement programs score reduction	=	Total environmental management score reduction
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3.4. Calculating the total environmental management score

The total environmental management score for each licensee will be calculated by deducting the licensee's total environmental management score reduction from the licensee's environmental management score as follows:

Environmental management score	-	Total environmental management score reduction	=	Total environmental management score
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3.5. Calculating the environmental management category

The total environmental management score will determine a licensee's environmental management category as follows:

Table 6: Total environmental management score and corresponding environmental management category

Total Environmental management score	Environmental management category
0–5	A
6–60	B
61–180	C
181–400	D
401+	E

The environmental management category will then be used by the EPA as part of calculating the annual licence administrative fee in accordance with Section 24 of the General Regulation.

NATIONAL PARKS AND WILDLIFE ACT 1974
Capertee National Park Draft Plan of Management

The Capertee National Park Draft Plan of Management is on public exhibition.

The plan may be viewed at www.environment.nsw.gov.au/get-involved/have-your-say or by appointment at:

- NPWS Mudgee Area office, 27 Inglis street, Mudgee

Contact 02 6370 9000 or email npws.mudgee@environment.nsw.gov.au to make an appointment.

Submissions on the plan must be received by **18 January 2023** via:

- the online form at www.environment.nsw.gov.au/get-involved/have-your-say
- email to npws.parkplanning@environment.nsw.gov.au
- mail to Manager, NPWS Planning and Assessment, Locked Bag 5022, Parramatta NSW 2124.

See www.environment.nsw.gov.au/help/privacy.htm for information on how we will treat any personal information you provide.

Protection of the Environment Operations Act 1997

Order granting exemption under section 284

Background

- A. On 15 December 2021, the NSW Environment Protection Authority (**EPA**) granted licence variation 1614881 for environment protection licence 761 (**EPL 761**) which is held by Sunset Power International Pty Ltd (ACN 162 696 335, trading as **Delta Electricity**) and regulates activities at Vales Point Power Station.
- B. Licence variation 1614881 amended EPL 761 to include, amongst other changes, a condition for the purposes of the *Protection of the Environment Operations (Clean Air) Regulation 2021* (**Clean Air Regulation**) which postponed the transition of plant at Vales Point Power Station from Group 2 to Group 5 with respect to emission standards for nitrogen oxides (**NO_x**).
- C. On 15 July 2022, the EPA wrote to Delta Electricity to advise that the EPA had reviewed the circumstances of its decision on 15 December 2021 and determined that that decision was likely to be legally invalid and, accordingly, that plant at Vales Point Power Station had transitioned to Group 5 under the Clean Air Regulation with respect to the emission standards for NO_x.
- D. On 21 July 2022, Delta Electricity wrote to the EPA requesting an exemption under section 284 of the *Protection of the Environment Operations Act 1997* (**POEO Act**), in the circumstances detailed under section 284(2)(b). Delta Electricity requested an exemption from the following provisions:
 - i. Section 128 of the POEO Act, which is an offence provision that requires standards of air impurities to not be exceeded; and
 - ii. The Group 5 NO_x emission standard under Schedule 3 of the Clean Air Regulation, which is 800 mg/m³.
- E. On 28 September 2022, the EPA decided it was satisfied that:
 - i. it is not practicable for Delta Electricity to comply with the provisions outlined in paragraph D of this Order by implementing operational changes to plant or practices in accordance with section 284(2)(b)(i) of the POEO Act; and
 - ii. Non-compliance with the provisions outlined in paragraph D of this Order will not have any significant adverse effect on public health, property or the environment in accordance with section 284(2)(b)(ii) of the POEO Act.
- F. On 20 October 2022, the Board of the EPA approved the granting of this exemption in accordance with section 284(2)(b)(iii) of the POEO Act.

Order

By this Order, the EPA, in the circumstances where:

- (i) it is satisfied that it is not practicable to comply with the relevant provision or provisions, by implementing operational changes to plant or practices, and
- (ii) it is satisfied that non-compliance with the provision or provisions will not have any significant adverse effect on public health, property or the environment, and
- (iii) the Board of the EPA has approved the granting of the exemption,

grants the holder of EPL 761, in respect of Boiler 5 and 6 at Vales Point Power Station (identified as Points 2 and 3 in EPL 761), an exemption under section 284 of the POEO Act from complying with the provisions of the POEO Act and Clean Air Regulation listed in Table 1 of this Order, subject to the conditions of this Order.

Table 1

Legislation	Provision	Requirements from which Delta Electricity is exempt in relation to Points 2 and 3										
POEO Act	Section 128	(1) The occupier of any premises must not carry on any activity, or operate any plant, in or on the premises in such a manner as to cause or permit the emission at any point specified in or determined in accordance with the regulations of air impurities in excess of— (a) the standard of concentration and the rate, or (b) the standard of concentration or the rate, prescribed by the regulations in respect of any such activity or any such plant.										
Clean Air Regulation	Schedule 3	Electricity generation										
		<table border="1"> <thead> <tr> <th>Air impurity</th> <th>Activity or plant</th> <th colspan="2">Standard of concentration</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Nitrogen dioxide (NO₂) or nitric oxide (NO) or both, as NO₂ equivalent</td> <td rowspan="2">Any boiler operating on a fuel other than gas, including a boiler used in connection with an electricity generator that forms part of an electricity generating system with a capacity of 30 MW or more</td> <td>Group 5</td> <td>800 mg/m³</td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Air impurity	Activity or plant	Standard of concentration		Nitrogen dioxide (NO ₂) or nitric oxide (NO) or both, as NO ₂ equivalent	Any boiler operating on a fuel other than gas, including a boiler used in connection with an electricity generator that forms part of an electricity generating system with a capacity of 30 MW or more	Group 5	800 mg/m ³		
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Conditions

The exemption under this Order is subject to the following conditions:

- (i) The following NO_x emission limits in Table 2 apply to Points 2 and 3 in EPL 761:

Table 2

Pollutant	Units of measurement	Percentile	Concentration limit	Reference conditions	Oxygen correction	Averaging period
NO _x	mg/m ³	100th	980	Dry, 273K, 101.3 kPa	7% O ₂	1 hour
NO _x	mg/m ³	99th	850	Dry, 273K, 101.3 kPa	7% O ₂	1 hour

- (ii) The holder of EPL 761 must engage a suitably qualified consultant to prepare a Low Load NO_x Emission Control Feasibility Report that includes the following:
 - (a) An analysis of at least 12 months of the most recent NO_x emission data for Points 2 and 3 under varying power station loads, including when the power station is operating at less than 50% capacity.

- (b) Identification of the cause of any spikes in NO_x emissions through Points 2 and 3 when the power station operates at less than 50% capacity.
- (c) A feasibility evaluation study of NO_x emission control measures to minimise NO_x emissions when the power station operates at less than 50% capacity, including the expected reduction in NO_x emissions for each mitigation measure.

For the purposes of this condition, feasibility means what is technically possible to implement at Vales Point Power Station in terms of engineering.

- (d) Identification of a preferred mitigation measure or measures to be implemented to minimise NO_x emissions when the power station operates at less than 50% capacity. The preferred mitigation measure or measures must be informed by consideration of conditions (ii)(a)-(c) of this Order.
- (iii) The Low Load NO_x Emission Control Feasibility Report prepared under condition (ii) of this Order must be submitted to Ms Corrie Ford, A/Manager Regulatory Operations Metro, EPA by 30 April 2023.
 - (iv) For avoidance of doubt, and subject to the conditions of this Order, all other conditions in EPL 761 in relation to Points 2 and 3 and Boilers 5 and 6 remain in force.

Duration of exemption

This Order takes effect from the date the Order is published in the NSW Government Gazette until 28 October 2024 unless otherwise revoked, varied or renewed. The Order may be revoked, varied or renewed under section 284(7) of the POEO Act.

Note: Under section 284(8) of the POEO Act an exemption may not be granted or renewed so as to have effect for a total period exceeding 5 years. A further exemption granted within 5 years after the expiry of an earlier exemption (being a further exemption that is the same in substance as the earlier exemption) is to be treated as a renewed exemption for the purposes of section 248(8).

STEPHEN BEAMAN PSM
Executive Director Regulatory Operations Metro
(by delegation)

Date: 26 October 2022