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Protection of the Environment Operations Act 1997

Order granting exemption under section 284

Background

- A. The NSW Environment Protection Authority (**EPA**) may exempt any person or class of persons from any specified provision or provisions of the *Protection of the Environment Operations Act 1997* (**POEO Act**) or the regulations, in the circumstances referred to in section 284.
- B. Snowy Hydro Limited (ACN 090 574 431) (**SHL**) holds Environment Protection Licence 13036 (**Licence**), issued under the POEO Act in respect of scheduled activities carried on at Colongra Power Station (**Colongra**) located off Scenic Drive, Budgewoi NSW 2262 (**Premises**).
- C. Colongra is occupied by SHL and operates as a 'peaking power station' that comprises four dual fuel (gas or diesel) turbines with low nitrogen oxides (**NO_x**) burners (Units: C1, C2, C3 and C4).
- D. On 12 April 2023, SHL emailed the EPA a letter dated 11 April 2023, requesting an exemption under section 284 of the POEO Act, in the circumstances detailed under section 284(2)(b), in respect of the planned routine maintenance combustion tuning of two turbine units (C1 and C4) (the **maintenance work**), to be conducted over a single 26 hour period within a window of 4 weeks to be scheduled in 2023 by the original equipment manufacturer (**Application**).
- E. SHL requested an exemption for this maintenance work from the following provisions:
 - i. Section 128 of the POEO Act – SHL commits an offence if the applicable standards of air impurities contained in the *Protection of the Environment Operation (Clean Air) Regulation 2022* (**Clean Air Regulation**) are exceeded;
 - ii. Section 52 and Schedule 2 of the Clean Air Regulation – requires SHL to comply with emission limits for NO_x¹ applicable for the duration of the maintenance work, of:
 - a. 70 mg/m³, while operating a turbine on gas, or
 - b. 90 mg/m³, while operating a turbine on diesel.
 - iii. Section 64 of the POEO Act – SHL commits an offence if *any* condition of the Licence is contravened, including Licence conditions L3.1, L3.2 and L3.3 which requires SHL to comply with emissions limits for NO_x applicable for the duration of the maintenance work.
- F. On 28 April 2023, in response to a verbal request from the EPA for further information, SHL emailed the EPA providing additional information from the original equipment manufacturer (**OEM**) of the turbine units in support of the Application.
- G. On 2 May 2023, SHL emailed the EPA providing an Air Quality Impact Assessment (**AQIA**) in support of the Application.
- H. On 8 May 2023, the EPA wrote to SHL requesting further information in respect of the Application for the purpose of addressing section 284(2)(b)(i) of the POEO Act.
- I. On 10 May 2023, SHL wrote to the EPA providing further information in support of the Application addressing the requirements under section 284(2)(b)(i) of the POEO Act.
- J. Concurrently with granting this exemption, the EPA will vary the Licence to insert revised temporary NO_x emissions limits and reporting requirements that will apply only to, and for the duration of, the maintenance work. Therefore, this exemption does not relate to Section 64 of the POEO Act (paragraph E.iii above).
- K. On **24 November** 2023, the EPA Executive Director Operations, by delegation, decided for and on behalf of the EPA that he was satisfied that:

¹ Nitrogen dioxide (NO₂) or nitric oxide (NO) or both nitrogen dioxide and nitric oxide, as NO₂ equivalent.

- i. It is not practicable for SHL to comply with the provisions outlined in paragraphs E.i and E.ii. above in relation to NOx emissions, 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 paragraphs E.i and E.ii. above in relation to NOx emissions, 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.
- L. On 8 June 2023, the Board of the EPA approved the granting of an exemption to SHL from section 128 of the POEO Act, and the emissions limits contained in Section 52 of the Clean Air Regulation, in relation to NOx emissions in accordance with section 284(2)(b)(iii) of the POEO Act, to enable SHL to carry out the maintenance work.

Order

By this Order, in circumstances where the EPA is satisfied that:

- (i) it is not practicable to comply with the relevant provision or provisions, by implementing operational changes to plant or practices, and
- (ii) 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,

the EPA grants Snowy Hydro Limited (ACN 090 574 431) an exemption under section 284 of the POEO Act from complying with the provisions of section 128 of the POEO Act and section 52 of the Clean Air Regulation in relation only to the activity and air impurities listed in Table 1 of this Order.

This exemption applies only in relation to the planned routine maintenance combustion tuning of two turbine units (C1 and C4) at Colongra Power Station.

Table 1.

Legislation	Provision	Requirements			
Clean Air Regulation	Schedule 2, Part 2, Division 2	Electricity generation			
		Air impurity	Activity or plant	Standard of concentration	
		Nitrogen dioxide (NO ₂) or nitric oxide (NO) or both nitrogen dioxide and nitric oxide, as NO ₂ equivalent	A turbine operating on gas, being a turbine used in connection with an electricity generating system with a capacity of 30MW or more	Group 6	70mg/m ³
A turbine operating on a fuel other than gas, being a turbine used in connection with an electricity generating system with a capacity of 30MW or more	Group 6		90mg/m ³		

Duration of exemption

This Order takes effect from 1 December 2023 and has effect until 11:59 pm on 29 December 2023 unless otherwise revoked, varied or renewed. The Order may be revoked, varied or renewed by further order 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 284(8).



JASON R. GORDON

Executive Director Operations (by delegation)

Date: 24 November 2023

PESTICIDES REGULATION 2017 – EXEMPTION ORDER UNDER CLAUSE 8

Name of Order

1. This Order is to be known as the *Public Authorities' Fire Ant Pest Management Technician Exemption Order 2023*.

Authority for Order

2. This Order is granted by the NSW Environment Protection Authority (EPA) pursuant to clause 8 of the Pesticides Regulation 2017 (Regulation).

Duration of Order

3. This Order commences on the date of publication in the NSW Government Gazette and has effect until revoked by the EPA by notice published in the NSW Government Gazette.

Objects of Order

4. The objects of this Order are to:

(1) Exempt authorised officers under the *Biosecurity Act 2015*, who meet the training and other requirements set out in this Order and who satisfy the conditions in this Order, from the requirement to hold a licence for pest management technician work when using a registered or permitted pesticide to control the presence and spread of fire ants in New South Wales.

Background

5. Section 45(1) of the *Pesticides Act 1999* (the Act) provides that a person must not carry out prescribed pesticide work unless the person is the holder of a licence that authorises the person to carry out that kind of work. Pest management technician work is prescribed pesticide work requiring a licence. Under clause 8 of the Regulation the EPA may, by order in writing, exempt a specified person or class of persons from any of the licensing requirements under Part 6 Division 1 of the Act and Part 2 of the Regulation.

The introduction, presence and spread of fire ants within the State of New South Wales may give rise to adverse effects on the economy, environment and the community. A biosecurity emergency was declared in New South Wales under the *Biosecurity Act 2015* (NSW) following publication of the Biosecurity (Fire Ant) Emergency Order (No. 2) 2023 dated 27 November 2023 on the website of the NSW Department of Primary Industries. Employees of public authorities in New South Wales and Queensland have been appointed as authorised officers under section 361 of the *Biosecurity Act 2015* for the purpose of confirming and controlling the presence of fire ants in New South Wales under the National Red Imported Fire Ant Eradication Program.

Exemption

6. This Order exempts persons authorised under clause 7 of this Order from the requirement to hold a licence for pest management technician work where that work involves the use of a registered pesticide for the prevention, control or eradication of fire ants for or on behalf of a public authority, subject to the conditions in clause 8 of this Order.

Authorised persons

7. (1) Persons authorised under this Order (authorised persons) are authorised officers under the *Biosecurity Act 2015* who:
 - (a) carry out pest management technician work, where that work involves the prevention, control or eradication of fire ants in the exercise of authorised officer functions under the *Biosecurity Act 2015*; and

(b) meet the conditions in clause 8 of this Order.

Conditions

8. The exemption in this Order only applies if the following conditions are met:

(1) A person authorised by this Order:

(a) must either:

(i) have a valid Australian Qualifications Framework Level 3 Chemical Accreditation qualification and must have undertaken training on how to safely use pesticides for the purposes of this Order and how to be compliant with the requirements of the Act and the Regulation; or

(ii) have completed the training provided by the National Red Imported Fire Ant Eradication Program for authorised officers to conduct treatment and surveillance activities for fire ants, an induction by the NSW Department of Primary Industries on compliance with the Act and Regulation and are supervised by someone who meets the requirements of clause (8)(1)(a) of this Order;

(b) must only use a registered pesticide or permitted pesticide for the carrying out of pesticide management technician work under this Order and in accordance with the approved label for that pesticide and the Australian Pesticides and Veterinary Medicines Authority permit for that pesticide; and

(c) must comply with the record-keeping requirements in Part 4 of the Regulation

(2) A person who is the supervisor of persons authorised under clause 7 of this Order must:

(a) instruct persons authorised under clause 7 of this Order on how to safely use pesticides for the purposes of this Order and how to be compliant with the requirements of the Act and the Regulation;

(b) ensure persons authorised under clause 7 of this Order are made aware of the application and limitations of this Order; and

(c) ensure training records are kept as evidence that persons authorised under clause 7 of this Order have been instructed as required by clause 8(1).

Definitions

In this Order -

Act means the *Pesticides Act 1999* (NSW).

Approved label has the same meaning as in section 4 of the Act.

Australian Qualifications Framework has the same meaning as in section 7 of the *Higher Education Act 2001* (Cth).

EPA means the NSW Environment Protection Authority.

Fire ant means the red imported fire ant *Solenopsis invicta*.

Licence means a licence required to carry out prescribed pesticide work under section 45(1) of the *Pesticides Act 1999*.

Pesticide has the same meaning as in section 5 of the Act.

Pest management technician work has the same meaning as in clause 6(1)(g) of the *Pesticides Regulation 2017*.

Permit has the same meaning as in section 4 of the Act.

Permitted pesticide means a pesticide approved for use against fire ants under permits issued by the Australian Pesticides and Veterinary Medicines Authority.

Prescribed pesticide work has the same meaning as in section 5A of the Act.

Public authority has the same meaning as in section 4 of the *Pesticides Act 1999* and clause 39 of the *Pesticides Regulation 2017*

Registered pesticide has the same meaning as in section 4 of the Act, but for the purposes of this Order does not include restricted pesticides used to control vertebrates or fumigants.

Regulation means the Pesticides Regulation 2017 (NSW).



Karen Marler
Director Technical – Chemicals, Land and Radiation
Environment Protection Authority
(as a delegate of the EPA)