



New South Wales

# Contaminated Land Management Regulation 2022

under the

Contaminated Land Management Act 1997

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Contaminated Land Management Act 1997*.

Minister for Environment and Heritage

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Contaminated Land Management Regulation 2013*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

- (a) the observance of certain guidelines about financial assurances,
- (b) the waiver or refund of the accreditation fee payable by a site auditor under certain circumstances,
- (c) requiring the following particulars of each site audit to be included in the annual return—
  - (i) whether the audit is a statutory site audit,
  - (ii) the termination date of a terminated audit and the reason for the termination,
  - (iii) the date of issue of a revised or amended statutory site audit statement and the reason for the revision or amendment,
- (d) increasing the amounts payable for certain penalty notice offences under the *Contaminated Land Management Act 1997*.

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## Contaminated Land Management Regulation 2022

under the

Contaminated Land Management Act 1997

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Contaminated Land Management Regulation 2022*.

#### 2 Commencement

This Regulation commences on 1 September 2022 and is required to be published on the NSW legislation website.

**Note—** This Regulation repeals and replaces the *Contaminated Land Management Regulation 2013*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

*the Act* means the *Contaminated Land Management Act 1997*.

**Note—** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

## **Part 2 Recovery of costs and guidelines about financial assurances**

### **4 Recovery of EPA's administrative costs associated with orders and proposals—the Act, s 34**

- (1) For the purposes of the Act, section 34(a)–(c), the amount is \$101 per hour or part of an hour.

**Note—** The amount is adjusted on 1 September each year under section 11.

- (2) When serving an order under the Act, Part 3 on a person, the EPA must give the person written notice of the amount, as adjusted under section 11.

### **5 Guidelines about financial assurances—the Act, s 42E**

For the purposes of the Act, section 42E, the following guidelines must be observed—

- (a) for the content of requirements in management orders for financial assurances—the *Financial Assurance Policy*, prepared by the EPA and published in the Gazette, as in force from time to time,
- (b) for the calculation of the amount of financial assurances required—the *Guideline on Estimating Financial Assurances*, prepared by the EPA and published by the Gazette, as in force from time to time.

## Part 3 Accreditation of persons as site auditors

### 6 Application fee for accreditation as site auditor—the Act, s 50

For the purposes of the Act, section 50(2)(c), the application fee is \$1,199.

**Note—** The application fee is adjusted on 1 September each year under section 11.

### 7 Accreditation fee for accreditation as site auditor—the Act, ss 51 and 52

For the purposes of the Act, sections 51(5) and 52(9), the accreditation fee is as follows—

- (a) if the accreditation period is 1 year or less—\$8,377,
- (b) if the accreditation period is longer than 1 year, but not longer than 2 years—twice the fee under paragraph (a),
- (c) if the accreditation period is longer than 2 years—triple the fee under paragraph (a).

**Note—** The amounts are adjusted on 1 September each year under section 11.

### 8 EPA may waive or refund fees—the Act, s 112

For the purposes of the Act, section 112(2)(b), the EPA may, on the application of a site auditor, waive or refund all or part of the accreditation fee required to be paid by the site auditor if the EPA is satisfied it is appropriate because the site auditor is taking a period of leave of—

- (a) at least 6 months, but not more than 1 year, or
- (b) if special circumstances exist—more than 1 year, but not more than 2 years.

### 9 Time for making renewal applications—the Act, s 52

For the purposes of the Act, section 52(1)(c), an application for renewal must be made—

- (a) at least 30 days, but not more than 60 days, before the expiry of the current accreditation period, or
- (b) if the current accreditation period expires during a period of leave of at least 6 months—before the start of the period of leave and at least 30 days before the expiry of the current accreditation period.

### 10 Particulars to be included in annual returns of accredited site auditors—the Act, s 53D

- (1) For the purposes of the Act, section 53D(3), the following particulars of each site audit must be included in the annual return—
  - (a) the location of the site, including Lot and DP numbers, street address, suburb and local government area,
  - (b) the size of the site,
  - (c) the zoning of the site under the *Environmental Planning and Assessment Act 1979* and, if a change in the zoning is proposed, the proposed zoning,
  - (d) the date on which the auditor received the request,
  - (e) the date of commencement of the audit,
  - (f) the date or expected date of completion of the audit,
  - (g) the use or uses of the site that have given rise to the contamination for which remedial action was carried out,
  - (h) the current use of the site and proposed uses of the site, if any,

- (i) the auditor's opinion on the suitability of the site for the current and proposed uses,
  - (j) the name of the person who carried out the remedial work reviewed by the auditor and the titles of the reports, if any, prepared by the person in relation to the remedial work,
  - (k) whether the audit is a statutory site audit,
  - (l) the termination date of a terminated audit, if any, and the reason for the termination,
  - (m) the date of issue of a revised or amended statutory site audit statement, if any, and the reason for the revision or amendment.
- (2) The particulars included in the annual return must be accurate—
  - (a) on the date of completion of the audit, or
  - (b) if the audit is not complete—on the date the annual return is provided to the EPA.

## Part 4 Miscellaneous

### 11 Adjustment of fees and costs

- (1) This section applies to each of the following amounts—
  - (a) the amount prescribed by section 4(1),
  - (b) the amount prescribed by section 6,
  - (c) the amount prescribed by section 7(a).
- (2) An amount must be adjusted for increases or decreases in public sector wages on 1 September each year.
- (3) The amount must be adjusted using the following formula—

$$\text{adjusted amount} = \text{cost} \times \frac{A}{B}$$

where—

**A** is the Public Sector Wage Price Index number for the last quarter published before the end of the year.

**B** is the Public Sector Wage Price Index number for the last quarter published before the start of the year.

- (4) If the adjusted amount is not a multiple of \$1, the amount must be rounded to the nearest multiple of \$1 and an amount of 50 cents must be rounded up.
- (5) The EPA must, before 1 September each year, publish notice of the adjusted amount on the following websites—
  - (a) the NSW legislation website,
  - (b) the EPA's website.
- (6) The EPA's failure to publish a notice does not affect a person's liability to pay the adjusted amount.
- (7) In this section—

**Public Sector Wage Price Index** means the Wage Price Index (Public Sector) for New South Wales published by the Australian Statistician.

**Public Sector Wage Price Index number**, for a quarter, means the number for the quarter appearing in the Public Sector Wage Price Index.

**year** means a year commencing on 1 September.

### 12 Protocol for determining amount representing monetary benefits—the Act, s 95A

For the purposes of the Act, section 95A(3), the *Protocol for calculating monetary benefits*, prepared by the EPA and published in the Gazette, as in force from time to time, is prescribed.

### 13 Amendments to guidelines that do not require consultative process—the Act, s 105

For the purposes of the Act, section 105(7), definition of **minor amendment**, paragraph (c), each of the following is declared to be a minor amendment—

- (a) an amendment consequential on a legislative change,
- (b) an amendment of a machinery nature.

### 14 Time limit for giving reasons for certain decisions—the Act, s 106

For the purposes of the Act, section 106(2)(a), the EPA must provide a statement of reasons within 30 days of receiving a request for the reasons.

## **15 Repeal and saving**

- (1) The *Contaminated Land Management Regulation 2013* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Contaminated Land Management Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Penalty notice offences

### 1 Application of Schedule—the Act, s 92A

For the purposes of the Act, section 92A—

- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable for the penalty notice is—
  - (i) the amount specified opposite the provision in Column 2, or
  - (ii) if the person alleged to have committed the offence is a corporation, and if a greater amount is specified opposite the provision in Column 3, the amount specified in Column 3.

| Column 1                      | Column 2 | Column 3 |
|-------------------------------|----------|----------|
| Provision                     | Penalty  | Penalty  |
| <b>Offences under the Act</b> |          |          |
| Section 10(5)                 | \$7,500  | \$15,000 |
| Section 14(6)                 | \$7,500  | \$15,000 |
| Section 28(4)                 | \$5,000  | \$10,000 |
| Section 48(1)                 | \$7,500  |          |
| Section 48(2)                 |          | \$15,000 |
| Section 60(1)                 | \$4,000  | \$8,000  |
| Section 60(2)                 | \$4,000  | \$8,000  |