

RECENT DEVELOPMENTS

New South Wales

Protection of the Environment Operations Act 1997

The Protection of the Environment Operations (General) Regulation 1998

Contaminated Land Management Act 1997

Sydney Harbour Foreshore Authority Act 1998

Protection of the Environment Operations Act 1997

On 24 December 1998 the Act was proclaimed and it will commence operation on 1 July 1999. The following regulations were also proclaimed by the same gazette:

- The *Protection of the Environment Operations (Savings and Transitional) Regulation 1998*;
- The *Protection of the Environment Operations (Amendments and Repeals) Regulation 1998*; and

The *Protection of the Environment Operations (General) Regulation 1998*. All of these will commence on 1 July 1999.

Of these regulations, the *Protection of the Environment Operations (General) Regulation 1998* is the most significant

The Protection of the Environment Operations (General) Regulation 1998.

These regulations introduced “low based licensing” into NSW. Low based licensing (LBL) comprises a major overhaul of the Environment Protection licensing system that control emissions. The licensing system applies to approximately 3,500 premises across NSW. The new system will introduce emission load limits into licences and link licence fees to the total amount of emissions (loads) from each licensed premises. The smaller the load, the lower the fee.

The *Protection of the Environment Operations Act* sets out which activities need an environment protection licence. When the LBL scheme commences operation, all licencees will be asked to pay a licence administration fee, and a first group of licences across selected industry sectors will progressively become liable to pay pollution load fees. These load fees will be phased in over a further four year period. Overtime, and after further consultation, it is proposed that other licencees will become subject to load fees.

Licence administration fees have been set to partially recover the government’s licence administration costs. The purpose of the pollution load fees is to provide rewards and incentives for licencees to reduce polluting discharges. The load fee varies to reflect the loads and types of pollutants discharged, and conditions in different receiving environments. The EPA undertook a 2 phase consultation during the making of the regulations. First it issued a draft operational plan and then a draft regulation. A number of major changes have been made to the scheme to address concerns expressed by submissions and through workshops

throughout the state. These include:

- an initial year of estimating loads with no load fees payable, meaning that no load fees will be payable before September 2001;
- a larger rebate of up to 100% for licencees who commit to three year load reduction agreements, allowing licencees to use their funds for environmental improvement instead of paying fees;
- reductions in administrative fees for all licencees compared to those previously proposed;
- livestock processing, coal and metal mining and related activities (including quarrying) will not pay load fees;
- provision for load fee offsets to reflect off-site emission reductions (eg oil industry could reduce volatile organic compounds in fuel for vehicles and receive a load fee discount for such compounds omitted from the premises);
- introduction of additional fee steps to “smooth” the administration fee structure between small and large activities;
- provision of a third immediate category of “estuarine” receiving waters;
- adjustment of the fee for certain air emissions to reflect lesser impacts in remote areas;
- late payment will now be interest based with a 60 day period to pay without penalty;
- providing for local government representation on the LBL technological review panel; and
- provision for refunds of administration fees where actual activity level is significantly less than licence capacity.

The scheme will commence on 1 July 1999. Licences that expires before that date will be renewed once more under the current system. The industries subject to pollution load fees include the following: agricultural fertiliser production, waste incinerators, brick works, cement production, fuel terminals (large), coke works, electricity generation, glass production, paint and plastics production, paper production, petroleum refining, iron and steel production, non-ferrous metal production, sewerage treatment, waste oil recovery.

Contaminated Land Management Act 1997

On 1 September 1998, all the remaining provisions of the *Contaminated Land Management Act* 1997 (other than section 60) commenced operation (CLM Act). At the same time, the *Contaminated Land Management Regulation* 1998 commenced operation. The CLM Act introduces a comprehensive new system for dealing with actual and suspected contaminated sites in New South Wales. It is supplemented by State Environmental Planning Policy No. 55 - Remediation of Land.

Section 60 of the CLM Act, (which requires that a person notify the EPA when they become aware that their activities have contaminated land in such a way as to present a significant risk of harm), will commence on 1 July 1999. The EPA has issued draft guidelines on this section, Significant Risk of Harm from Contaminated Land and the Duty to Report, and is current revising those guidelines. They are expected to be released in final form on 1 April 1999.

The *Contaminated Land Management Regulations* 1998 commenced operation on 1 September 1998. These regulations repealed the *Contaminated Land Management (Site Auditors) Regulation* 1998. The regime for the remediation of contaminated land has been supplemented by the release of the Contaminated Sites Guidelines for the NSW Site Auditor Scheme which details the procedures for carrying out site audits, the issuing of site audit statements and other matters.

Sydney Harbour Foreshore Authority Act 1998

On 14 December 1998, the *Sydney Harbour Foreshore Authority Act* received the royal assent. This Act will establish a single Sydney Harbour Foreshore Authority and will replace The Sydney Cove Redevelopment Authority, The Darling Harbour Authority and the City West Development Corporation.

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