

Draft Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Amendment Regulation 2016

Stakeholder submissions

Summarised comments and EPA response

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ISBN 978-1-76039-633-6
EPA 2016/0776
December 2016

Draft Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Amendment Regulation stakeholder submissions: Summarised comments and EPA response

The draft Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Amendment Regulation 2016 was on public exhibition from 18 January to 19 February 2016.

A total of 14 submissions were received, from:

- Six individuals/joint submissions
- Hunter Communities Network (HCN)
- Department of Primary Industries
- Minerals Council
- Bylong Valley Protection Alliance (BVPA)
- Nature Conservation Council (NCC)
- Hunter Environment Lobby (HEL)
- Lock the Gate Alliance (LTGA)
- AGL Macquarie (AGLM)

Full submissions can be viewed at: [Review of the Protection of the Environment Operations \(Hunter River Salinity Trading Scheme\) Regulation 2002](#), where the author has given the EPA permission to publish them.

Table 1 (page 2) provides a summary of comments on the draft Amendment Regulation that were made in stakeholder submissions and an EPA response to the issues raised.

Table 2 (page 6) provides a summary of comments raised in relation to the Report on the Review (and other comments not directly relevant to the draft Amendment Regulation) and an EPA response to the issues raised.

Table 1: Summary of comments on EPA’s proposed amendments to the Regulation

Proposed amendment/issue Comments from submissions	Submitters	Total submissions	EPA response
Clause 11 Flood flow thresholds: increased thresholds			
Support proposed amendment.	Minerals Council (1) Scheme participant (AGLM) (1) Env/comm groups (NCC) (1) Department of Primary Industries (1)	4	<p>There was disagreement amongst stakeholders on proposed increases to flood flow thresholds. In order to resolve this issue, the EPA carried out further targeted consultation with scheme participant representatives including the HRSTS Operations Committee and the NSW Minerals Council in mid-2016. The EPA also carried out further detailed analysis on participant discharge capacity, which was found to have increased.</p> <p>Result: Retention of the flood flow exemption. Further increase of the flood flow thresholds:</p> <p>Amend clause 11 to increase the flood flow thresholds:</p> <ul style="list-style-type: none"> • to >6,500 ML/day in the upper sector • to >16,500 ML/day in the middle sector • to >28,500 ML/day in the lower sector. <p>Revisit flood flow thresholds in late 2018 following the review of the credit trading platform. For a more detailed overview of this issue and further background, refer to Questions and answers: Changes to flood flow thresholds.</p>
Retention of ‘trading rules order’ penalty for flood flow salinity breaches is an appropriate risk-management response.	Department of Primary Industries (1)	1	
Oppose retention of flood flow credit exemption in the Regulation. Oppose ‘uncontrolled’ discharges outside of the Scheme.	Individuals/joint subs (6) Env/comm groups (LTGA, NCC, HEL, HCN, BVPA) (5)	11	
The industry will cease the operation of the industry-coordinated flood flow sharing scheme (i.e. the MERF scheme) should the proposed changes to flood flow thresholds go ahead.	Minerals Council (1)	1	Noted.
Mitigate potential impacts of the amendment by improving the efficiency of temporary trading mechanisms.	Minerals Council (1)	1	The EPA has commenced a review of the efficiency of the credit trading platform including an examination of potential improvements to the process of temporary credit trading.
Increase the lower end of the high flow thresholds.	Env/comm groups (HCN) (1)	1	No change to Regulation. The thresholds for a high flow event under the Scheme have been set based on the flow in the River required to adequately flush through participant discharges to the ocean without accumulation in the river system.

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Proposed amendment/issue Comments from submissions	Submitters	Total submissions	EPA response
Various clauses			
Credit location: credits assigned to specific authorised discharge points			
Support proposed amendments.	Minerals Council (1) Scheme participant (AGLM) (1) Env/comm groups (NCC) (1) Department of Primary Industries (1)	4	Proceed with proposed amendments.
Clause 25			
Total allowable discharge: calculation description clarified and examples deleted			
Support proposed amendment.	Scheme participant (AGLM) (1)	1	Proceed with proposed amendment.
Various clauses			
First issue credits and first auction of credits and pilot scheme: removal of redundant references			
Support proposed amendments.	Scheme participant (AGLM) (1)	1	Proceed with proposed amendments.
Clause 49C			
Credit transfers – sector credits discount factors: permit the transfer of credits from a restricted sector to a non-restricted sector			
Support intent of proposed amendment. Request clarification of clause wording.	Minerals Council (1)	1	Proceed with proposed amendment (reconsider clarity of the proposed clause).
Clause 64			
Credit Register details: allow the Registrar more scope to determine how credit transfers are recorded in the Credit Register			
Oppose making it mandatory for credit prices to be entered into the credit register (support it being voluntary only).	Scheme participant (AGLM) (1)	1	Proceed with proposed amendment. The proposed amendment provides sufficient flexibility for the EPA to deal with this concern operationally; e.g. the EPA could release aggregated information on credit prices only. Review the efficiency of the credit trading platform and include examination of the costs and benefits of visible credit prices. Consider how to balance the need for commercial confidentiality with the need for public transparency. For example: <ul style="list-style-type: none"> a) requiring the input of price information for each trade, maintaining it on a confidential basis. b) the EPA using this data to provide a regular, detailed report on price trends, which does not link particular transactions with particular companies (similar to the report released following credit auctions).

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Proposed amendment/issue Comments from submissions	Submitters	Total submissions	EPA response
Clause 70 Operations Committee: update agency names			
No comments received.			Proceed with proposed amendments.
Clause 84 Excess auction proceeds: clarify that excess funds can be carried over and used to cover the costs of the scheme in any future year			
Support proposed amendment.	Scheme participant (AGLM) (1)	1	Proceed with proposed amendments.
Request for the clause to be broadened to allow scheme funds to be used for a greater range of beneficial programs throughout the catchment.	Individuals/joint subs (3) Env/comm groups (LTGA, HEL, HCN) (3)	6	S. 295(4) of the Protection of the Environment Operations Act 1997 restricts how the scheme funds can be used, therefore it is not possible to provide a broader use for funds in the Regulation. If a trend of increasing revenue is observed over time, the EPA will consider amending the POEO Act to allow for a broader use of funds. Note: the proposed amendment to this clause would not restrict possible alternate uses for scheme funds should the POEO Act be amended in the future (i.e. use of the phrase 'the EPA may ...' in cl. 84(2)).
Request to remove the reduction in total contributions if the credit sales exceeds the total cost of the scheme.	Env/comm groups (HCN) (1)	1	
See also comments on issue 'Additional uses for revenue generated via auctions' in Table 2 below, requesting amendments to the POEO Act.			
Clause 93 Review of Regulation – timetable: prescribe that the next review is to commence in 10 years			
Support proposed amendment.	Scheme participant (AGLM) (1)	1	Proceed with proposed amendment.
Dictionary Sector reference points: update lower sector gauging station number; allow the EPA to publish an alternative gauging station reference on the EPA's website, if required.			
Support proposed amendment. Request that Regulation require the EPA to expressly advise participants of any change.	Scheme participant (AGLM) (1)	1	Proceed with proposed amendment. Notification of participants is an administrative issue and will be handled administratively at the time of change. The EPA will also instruct the Services Coordinator to list any updated gauging station numbers on the River Register.
Various clauses Other miscellaneous amendments			
No comments received.			Proceed with proposed amendments.

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Proposed amendment/issue Comments from submissions	Submitters	Total submissions	EPA response
Comments on other aspects of the Regulation (not directly addressed in the draft Amendment Regulation)			
<p>Clause 52: request for the purchase of credits at auction and credit trading to be restricted to those who have a genuine current or future need to discharge saline water (i.e. include 'eligibility criteria').</p>	<p>Minerals Council (1)</p>	<p>1</p>	<p>Minor additional change to Regulation (clarification only).</p> <p>The scheme has been designed to operate as an open market. The auction and trading of credits allows them to be allocated to those who value them the most. Credits can be valued for a range of different reasons, not just for the ability to discharge.</p> <p>There has only ever been eligibility criteria for ownership of 'first issue credits'. Ownership of these credits was restricted to discharging participants during the early years of the scheme. These credits have now all expired.</p> <p>The draft Amendment Regulation proposed to remove all clauses relating to the first issue of credits and the first auction of credits, which are now redundant (described as a separate issue above). This draft amendment inadvertently overlooked the reference to 'eligible person' in clause 52. This reference is superfluous/no longer relevant (as first issue credits no longer exist) and should therefore be removed for clarity.</p> <p>Amend clause 52(1) to clarify that any person may apply to be a credit trader and delete clause 52(2) which refers to all persons being 'eligible persons'.</p>
<p>Clause 62: request for the provision of a defence for any irregular trades that occur in contravention of the clause where the participant has acted in good faith and made an honest and reasonable mistake.</p>	<p>Minerals Council (1)</p>	<p>1</p>	<p>No change to the Regulation.</p> <p>Providing defences/exemptions to this clause would change the substantive effect of the clause. In addition, defining an 'honest and reasonable mistake' would unnecessarily overcomplicate the clause.</p> <p>The EPA applies regulatory discretion, taking intent into account, when determining an appropriate regulatory response to breaches of the legislation (e.g. education, warnings, penalty notices, prosecutions etc.).</p> <p>A review of the efficiency of the credit trading platform has commenced. The EPA will consider mechanisms that may help to avoid unintentional trades that are in breach of the scheme rules (i.e. the scheme credit trading rules may be 'hard-wired' into the trading platform which would have the effect of identifying and filtering out mistakes).</p>

Table 2: Comments relating to the Report on the Review and other comments

Section of report / issue Comments from submissions	Submitters	Total submissions	EPA response
General comments on the HRSTS			
General support for the scheme; stakeholders feel that it is an effective tool for protecting the river and an improvement on previous salinity management approaches.	Individuals/joint subs (7) Env/comm groups (HCN, NCC, LGTA, BVPA) (4) Minerals Council (1) Department of Primary Industries (1)	13	Noted. Consistent with Report.
Stress the importance of government intervention to minimise risks to river health (in general).	Env/comm groups (NCC) (1)	1	Noted.
Cumulative impacts/mine expansion/mining in general			
The rules of the HRSTS need to be tightened to further regulate mine water discharge, to account for expansion of the mining industry/need a greater understanding of the impacts of mine expansion on the operation of the HRSTS.	Individuals/joint subs (3) Env/comm groups (HCN, BVPA, LTGA) (3)	6	A significant success of the scheme is that salinity targets have almost always been maintained since the Regulation commenced in 2002, even while mine expansion has occurred. The salinity targets act as a 'cap' on the amount of salt that can be discharged into the Hunter River catchment by all participants, at any one time, during high and flood flows. The review of the Regulation identified many legislative and operational improvements to help future-proof the scheme.
Concerned about cumulative environmental impacts (in general) from proposed ongoing expansion of coal mining: <ul style="list-style-type: none"> west of the Hunter River/Muswellbrook, particularly in the Goulburn River sub-catchment (e.g. Wilpinjong, Bylong, Moolarben and Ulan mines) in the upper sector of the Hunter River (e.g. Bengalla, Mangoola, Muswellbrook West, Dartbrook, and Mt Pleasant mines) in the middle and lower sectors (e.g. Mt Owen and Rix's Creek). 	Individuals/joint subs (5) Env/comm groups (HEL, HCN, LTGA, BVPA) (4)	9	Noted. The HRSTS specifically addresses the cumulative impacts of saline water discharges on the catchment via the enforcement of salinity targets, which 'cap' the amount of salt that can be collectively released during high and flood flows. The cumulative impacts of coal mining (in general and outside the Scheme area) are considered in a number of different and complementary ways, including through: <ul style="list-style-type: none"> the environmental planning/development approvals process environment protection licences (e.g. through the application and assessment process, licence reviews, pollution reduction programs)

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Concerned that there has been no rigorous regional assessment of cumulative impact of mining on the Hunter River catchment.	Individuals/joint subs (5) Env/comm groups (HEL, HCN) (2)	7	<ul style="list-style-type: none"> the air quality monitoring networks in the region, which inform management actions for air quality in the region. <p>The EPA's review of load-based licensing will also be considering whether coal mining should be brought into the scheme, to give the industry additional incentive to reduce its pollution.</p>
Concerned that mines such as Mangoola were approved with a condition of nil discharge, only to have that condition over turned in subsequent modifications.	Env/comm groups (HEL) (1)	1	The HRSTS uses a system of tradeable credits to allow new participants, like Mangoola, to enter the scheme without increasing the overall amount of salinity that can be released to the Hunter River catchment by participants.
Specific concerns about a high rainfall event in 2010, claiming that the licences for the three operating mines were turned off and that uncontrolled mine water discharge was allowed for a period of 6 months into the Goulburn River catchment. Concerned about the impact this would have had on the salinity levels entering the Hunter River at Denman.	Env/comm groups (HCN) (1)	1	<p>Between 28 November and 10 December 2010, significant rainfall (the highest in over 50 years) resulted in the Ulan area being declared a natural disaster area. As a result, three mines in this area each applied for, and were granted, a licence variation to allow an emergency discharge to ensure any discharges could occur in a controlled manner.</p> <p>The discharges were strictly controlled The EPA imposed strict conditions on the EPLs to ensure that the discharges occurred during the best conditions for the receiving waters and a salt target was established to minimise the impact on the HRSTS. The mines were required to closely monitor and report on the quality of the receiving waters and the quality and volume of their discharges. The discharges were permitted for different length periods, but not exceeding 3½ months. The mines reported compliance with the EPA's conditions during these emergency discharges.</p>
Mines should not be allowed to discharge without being part of load-based licensing.	Env/comm groups (HCN) (1)	1	Noted. The current review of the load-based licensing scheme is considering whether additional activities (including mining) should be included in the scheme and the appropriate production thresholds for participation.

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Altering salinity targets (section 3.2.1 of report)			
Support for retention of current salinity targets, noting that lower salinity targets would be both achievable and beneficial.	Env/comm groups (NCC) (1)	1	Noted. Consistent with Report.
Support retention of current salinity targets, noting compelling evidence for change would be required.	Department of Primary Industries (1)	1	
Increasing discharge opportunities (section 3.2.2 of Report)			
Support for continued prohibition of discharges into low flows.	Individuals/joint subs (6) Env/comm groups (HEL, LTGA, BVPA) Department of Primary Industries (1)	10	Noted. Consistent with Report.
Request that EPA aim to maximise the robustness and sophistication of procedural aspects and operational systems of the Scheme (various suggestions to improve the River Register and the Credit Register).	Minerals Council (1)	1	Consistent with operational improvements identified in the Report under this issue. Operational improvements to be scoped and carried out in consultation with the Operations Committee.
Request that EPA disclose the details of proposed improvements to Register management, including: recording and administration of assignments, and transfers of credits.	Minerals Council (1)	1	
Request that EPA enable the timing of discharge blocks to reflect changes in daylight savings hours.	Minerals Council (1)	1	
Other significant sources of salt within the scheme area (section 3.2.3 of Report)			
Support for further investigation and identification of the major sources of salt on a sub-catchment basis.	Individuals/joint subs (1)	1	Noted. Consistent with Report.
Salt from the Goulburn River sub-catchment (section 3.2.4 of the Report)			
See several relevant comments under 'Cumulative impacts of coal mining/concerns about mine expansions in the Hunter Valley' above			

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The scheme's impact on tributaries and on the lower Hunter River (section 3.2.5 of the Report).			
Concern that discharges into tributaries under the scheme often continue beyond any high flow pulse. Improved monitoring of mine discharge must be undertaken.	Env/comm groups (HCN) (1)	1	<p>The HRSTS model has been designed so that individual site discharge periods (or 'windows') are assigned to each mine on the River Register in advance of an upcoming high or flood flow discharge event. These site discharge periods are allocated to each mine individually, based on their geographical location and the rainfall/river flow conditions throughout the catchment to ensure that saline water is discharged only into high or flood flow conditions.</p> <p>This system works to prevent salinity targets for the Hunter River being exceeded during discharge events.</p> <p>The EPA has asked for information about the incidents being referred to in the submission. Any specific examples provided in the future will help to inform any relevant action by the EPA to ensure the scheme is operating in accordance with legislated requirements.</p>
Other pollutants present in saline water discharges (section 3.2.6 of the Report).			
Tighten the scheme rules to regulate other contaminants in mine water discharge.	Individuals/joint subs (1)	1	As stated in the Report, it would be difficult to add other pollutants and would also over-complicate the scheme. However, these pollutants can be regulated via licence conditions where required.
Support for further research and monitoring on this issue.	Individuals/joint subs (1) Minerals Council (1) Department of Primary Industries (1)	3	<p>Consistent with the further investigations identified in the Report for this issue.</p> <p>The EPA will consider the most appropriate mechanism for further investigating the issue of other contaminants that may be present in participant discharge waters and their impacts on the Hunter River catchment.</p>
Request EPA to consider collaborating with DPI Agriculture where proposed studies involve the Department's areas of expertise.	Department of Primary Industries (1)	1	
Request for EPA to commit to investigating funding opportunities for further work on this issue.	Minerals Council (1)	1	

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Section of report / issue Comments from submissions	Submitters	Total submissions	EPA response
Request for EPA to liaise with the Upper Hunter Mining Dialogue Joint Working Group – Water with regard to further work on this issue.	Minerals Council (1)	1	
Improving the auction process (section 3.3.2 of the Report).			
Credit auctions should continue to be operated on a per-company basis within the scheme, not per discharge point, in order not to unnecessarily complicate the process.	Scheme participant (AGLM) (1)	1	Noted. No change to the auction process is proposed. Companies will be responsible for assigning any credits won at auction to relevant discharge points.
Improving the credit trading process (section 3.3.3 of the Report)			
Request that EPA improve the operation of the credit register (various suggestions including improved management of temporary trades).	Minerals Council (1)	1	Consistent with operational improvements identified in the Report under this issue. The EPA has commenced a review of the efficiency of the credit-trading platform, in consultation with the HRSTS Operations Committee, to examine the costs and benefits of implementing a range of operational improvements to help facilitate trading, improve transparency and reduce transaction costs.
Additional uses for revenue generated via auctions (section 3.4.1 of Report)			
Request for excess funds to be directed towards a range of beneficial programs within the catchment (Regulation and Act amendments proposed).	Individuals/joint subs (5) Env/comm groups (NCC, LTGA, HEL, HCN) (4)	9	Consistent with Report. If a trend of increasing revenue is observed over time, the EPA will consider amending the POEO Act to allow for a broader use of funds.