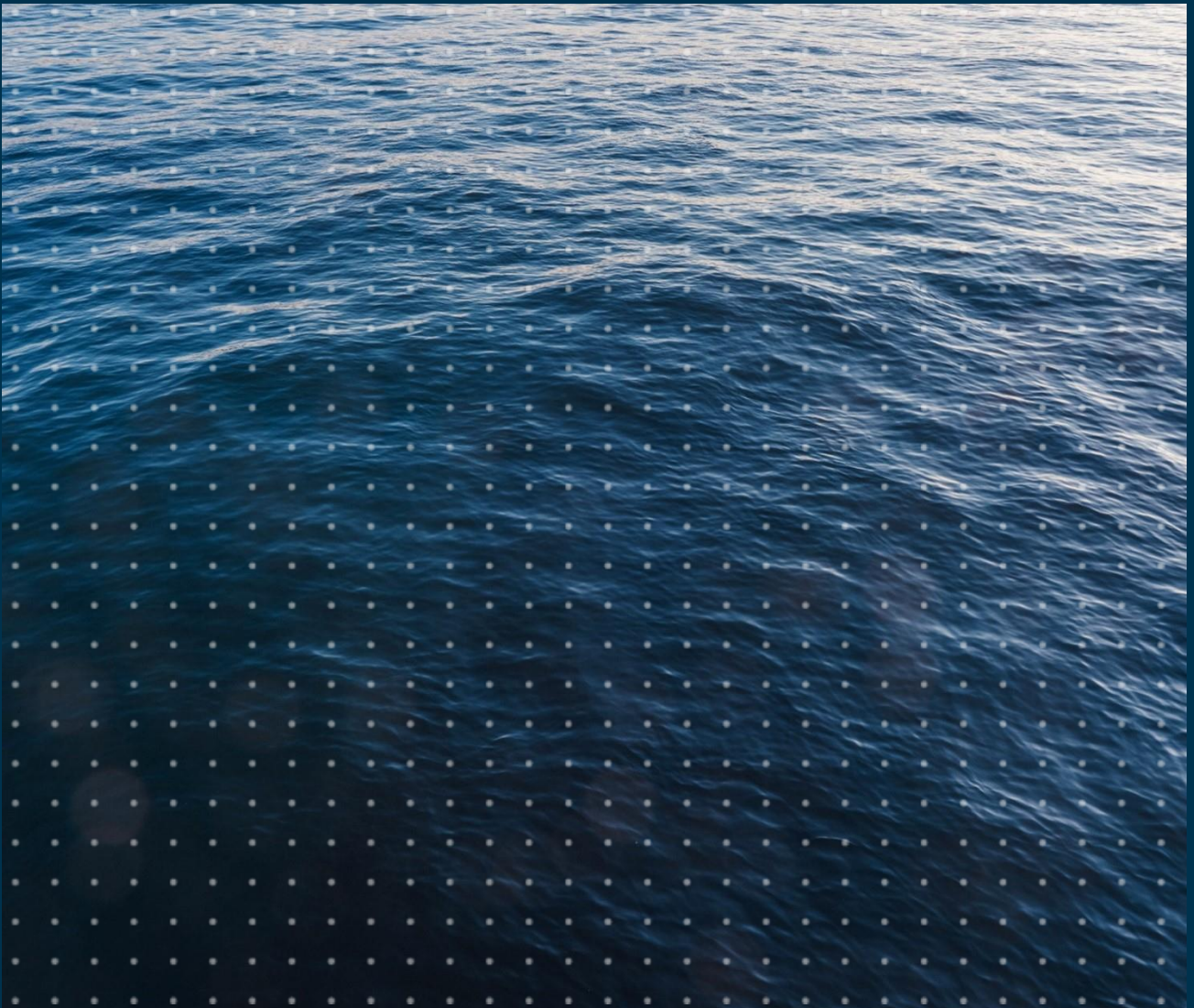


Environment Protection Authority

# Consultation on the draft POEO (General) Regulation 2022

## Response to submissions



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# Introduction

This document summarises submissions received from public consultation on the draft Protection of the Environment Operations (General) Regulation 2022 (draft Regulation). The draft Regulation is proposed to replace the Protection of the Environment Operations (General) Regulation 2021 (POEO General Regulation 2021) which is due for repeal on 1 September 2022. It includes proposed amendments to the POEO General Regulation 2021 and Schedule 1 of the Protection of the Environment Operations Act 1997 (POEO Act). The proposed amendments seek to:

- improve the operation of the POEO General Regulation 2021
- clarify and simplify the POEO General Regulation 2021
- refine scheduled activity definitions within Schedule 1 of the POEO Act and better align these to Schedule 1 of the POEO General Regulation 2021
- improve the EPA's cost recovery capability.

Consultation was open for 5 weeks, from 11 March to 14 April 2022.

If you have any questions about this document or the consultation process, please email us at [POEOGenReg.Review@epa.nsw.gov.au](mailto:POEOGenReg.Review@epa.nsw.gov.au)

## Stakeholders and submissions

The EPA received 1118 submissions from government agencies, industry, environment groups and individuals:

- 9 from government agencies/local councils
- 12 from industry/industry associations
- 1097 from community/environment groups and individuals.

Comments in the submissions have been summarised, with a focus on issues where changes to the regulation needed to be considered. Comments have been grouped together where similar comments from different submissions raised the same issue.

Some submissions included direct questions about the proposals. The EPA provided written or oral responses directly to the stakeholder to answer these questions.

The EPA received three requests for an extension to provide comments on the draft Regulation. The EPA accepted and considered these submissions after the close of the public consultation period.

## EPA response

The EPA reviewed and considered all comments. Changes were made to the draft Regulation where needed. Some general comments related to issues that are outside the scope of the draft Regulation and will require further consideration as part of another process or required additional work that could not be completed in time to remake the Regulation by 1 September 2022.

Table 1 summarises the comments and the EPA's responses.

**Table 1 Summary of submissions and EPA responses**

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
New application fee for environment protection licences	1 – government	New application fee – <b>supported</b> .	Noted
	3 – industry	New application fee – not supported.	The EPA reviewed the advice and it is not supported.
	1 – government	The regulation does not say how the Integrated Development Application (IDA) fee would be subtracted from the application fee.	A new provision has been added to the regulation to ensure the IDA fee is subtracted.
	3 – industry	The application fee is high for a specific scheduled activity, or compared to other jurisdictions. Ensure it is proportionate to other Australian States and Territories and that it only reflects the costs of assessing and processing the environment protection licence.	Justification for the fee is detailed in section 5.1 of the Regulatory Impact Statement (RIS). The fee is based on the amount of work required by the EPA to assess, develop and issue a licence. The EPA reviewed the advice and it is not supported.
Indexation of Fees – administrative fee units, pollutant fee units, vehicle testing and inspection, environment protection notices	3 – government	Indexation of fees – <b>supported</b> .	Noted
	1 – industry 1 – individual	Indexation of fees – not supported.	The EPA reviewed the advice and it is not supported. Justification for fee increases is detailed in section 6 of the RIS.
	1 – industry	Fee increases should be capped at Consumer Price Index.	Justification for fee increases is detailed in section 6 of the RIS. Fee increases are in line with appropriate inflation indexes. The EPA reviewed the advice and it is not supported.

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
	1 - government	Suggest introducing a separate administration fee for environment protection notices for individuals and larger corporations.	<p>The administration fee rate is discussed in section 8.3 of the RIS. The same fee applies to both individuals and corporations because it is based on the work required by the appropriate regulatory authority to prepare and issue a notice. A similar amount of work is required to prepare and issue a notice to both individuals and corporations.</p> <p>The EPA reviewed the advice and it is not supported.</p>
Penalties	5 – government	Increase in penalty amount for failure to pay the administrative fee for environment protection notices – <b>supported</b> .	Noted.
	1 – government	Request for a new offence and penalty – mid range between littering and illegal dumping offences.	<p>This issue is being considered by the EPA via another process.</p> <p>No change as part of this remake.</p>
Testing of Pollution Incident Response Management Plan (PIRMP)	4 – government 2 – industry	Refining the requirements for when a PIRMP needs to be tested – <b>supported</b> .	Noted
	1 – government	Consider clarifying the term ‘material harm.’	<p>‘Material harm to the environment’ is defined in section 147 of the POEO Act.</p> <p>No change needed.</p>
Bird accommodation	1 – industry	Fee changes to bird accommodation – not supported.	<p>Justification for this change is detailed in section 5.3 of the RIS and is based on the changing nature of the industry, which is moving towards larger bird accommodation facilities.</p> <p>The EPA reviewed the advice and it is not supported.</p>

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
Burning of bio-material in electricity generating works	1090 – individual 4 – industry	Exemptions to the ban of native forest biomaterial for electricity generation is too broad, promoting the destruction of our native forests. The definition of ‘higher value use’ should be expanded.	The NSW Government is considering a range of options to clarify and streamline the existing arrangements for the industry, and ensure forest and timber products go to their highest and best value use, including ecological function.  No change as part of this remake.
	1 – individual	Clause 135 should be amended so anyone who causes or allows native forest biomaterial to be burned in electricity generating work, or sold as firewood, is guilty of an offence.	As per comment above.  No change as part of this remake.
	1 – community group	Opposition to the burning of any material which pollutes the air.	The legislative framework for regulating air pollution in NSW is robust. No change warranted.
	1 – industry	Supports retaining the sections related to ‘Burning of bio-material in electricity generating works’ section in the draft Regulation.	Noted
‘Extractive activities’ definition	2 – government 1 – industry	Proposed ‘extractive activities’ definition – <b>supported.</b>	Noted
	1 – industry	Consider whether it is the EPA’s intention to licence ‘beneficial’ extractive activities such as rehabilitation.	The EPA provided a written response that explained that all extractive activities, regardless of their nature, that meet the activity description and threshold should be licensed due to the potential environmental risk of the activity.  No change warranted.



Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
	1 – government 1 – industry	<p>The proposed definition will result in additional administration, project costs and time delays for large-scale navigational dredging. The proposed changes are not envisaged to result in improved environmental outcomes.</p> <p>The changes should not put at risk the current NSW Government approach to support strategic dredging operations for the navigation of vessels.</p>	<p>The EPA further consulted within government and has amended the proposal to include a separate activity definition for maintenance dredging undertaken by, or on behalf of, a government agency for navigational safety purposes. This reinstates the pre-2019 requirements and thresholds for this activity.</p> <p>Schedule 1 of the POEO Act amended.</p>
	1 – industry	The definition should be amended to clarify that extraction of materials as part of mining operations are outside the scope of this scheduled activity.	<p>The changes are not intended to apply the 'extractive activities' scheduled activity to mining operations. Mining operations would generally be excluded from this activity via section 19(2) of Schedule 1 of the POEO Act 1997.</p> <p>No change needed.</p>
	1 – government	Seeking confirmation that the proposed definition will continue to exclude 'cut and fill operations and the excavation of foundations or earthworks', and thereby not affect the licensing of Road and Rail Construction activities.	<p>Advised verbally that this is correct.</p> <p>No change needed.</p>
	1 – government	Broaden the licensing exemption for 'aquaculture and mariculture' to bivalve molluscs and seaweed propagule production.	<p>Agreed, as this will support emerging industries with very low environment impact and is consistent with the existing exemption for oysters.</p> <p>Schedule 1 of the POEO Act amended.</p>
	1 – government	Confirm whether 'excreta, manure, and urine' arising from animals (e.g. cows and dairy production, piggeries) is clearly captured by either (a) or (e) of Schedule 5 and, if not, consider if additional provision needs to be made for this potential source of water pollution.	<p>Agreed, the intent is that animal and human excreta, manure and urine, including animal waste from a treatment device, is a prescribed matter for the definition of water pollution.</p> <p>Schedule 5 amended to ensure clarity.</p>
Scheduled activity definitions	1 – government	Broaden the licensing exemption for 'aquaculture and mariculture' to bivalve molluscs and seaweed propagule production.	<p>Agreed, as this will support emerging industries with very low environment impact and is consistent with the existing exemption for oysters.</p> <p>Schedule 1 of the POEO Act amended.</p>

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
	1 – industry 1 – government	Amendments to ‘marina and boat repairs’ – not supported as it would lead to an increase in red tape, bureaucratic or regulatory burden, or costs.	The EPA further consulted with industry and will not progress this amendment as the proposed change will not achieve the EPA's intent to clarify which activities are captured under this scheduled activity. Further work will be done to assess the need to amend this scheduled activity definition to clarify it.  Proposed amendment to Schedule 1 of the POEO Act not progressed.
	1 – government	For ‘boat construction/maintenance (dry/floating docks)’, EPA should consider attaching an EPL to the mobile equipment, rather than the location, which is intended to change.	No change warranted.
	1 – government	Recommends the definition of ‘dairy animal accommodation’ is clarified to include any or all ‘animals used for the production of milk’.	Definition of ‘dairy animals’ included in section 22(1)(a) of Schedule 1 of the POEO Act and the definition of ‘dairy animal accommodation’ refers to ‘the accommodation of <i>dairy</i> animals.
	1 – industry	Clarification of thresholds for various activities within Schedule 1 of the POEO Act – <b>supported</b> .	Noted.
	1 – government	Amendments to Schedule 1 are <b>supported</b> if they assist interpretation of legislative provisions and enable scheduled activities to be clearly identified, but not if they increase the regulatory burden for local government.	The proposed changes to Schedule 1 are not expected to increase the regulatory burden for local councils.  No change needed.



Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
	2 – government 1 – industry	<p>Clarity requested around:</p> <ul style="list-style-type: none"> <li>the definition of the scheduled activity ‘Waste Disposal (Application to Land)’</li> <li>on-site/off site waste and the definition of “waste” in general across scheduled activities</li> <li>the definition, application and intent of ‘On Site Chemical Waste Storage’</li> </ul>	<p>These issues are being considered by the EPA via other processes.</p> <p>No changes as part of this remake.</p>
	1 – industry	Recommend an “end of waste” provision for resource recovery materials.	This issue has been submitted to the Resource Recovery Framework Review and will be considered as part of that process.
	1 – government	Request to amend the activity “waste disposal (application to land)” to exclude oyster shells continuously emersed for at least 30 days to enable application to land without treatment.	This issue is being considered by the EPA via another process.
	1 – government	<p>If the proposed addition of materials to “shipping in bulk” is aimed at managing vessel emissions, then EPA should consider a more consistent approach to managing the key impact of shipping activity.</p> <p>Alternatively, if it is determined to limit regulation to shipping in bulk, then consideration should be given to focusing EPL conditions to the management of these cargoes rather than ship emissions more generally.</p>	<p>There are various regulatory tools at the state and federal level to manage environmental risks from shipping activities. The proposed changes are designed to level the playing field for facilities that receive ships carrying similar cargo (and the handling of that material) that pose similar environmental risks.</p> <p>No change warranted.</p>
	1 – industry	Clarity requested around the need for an Environment Protection Licence for ad hoc process issues that exceed the 5-tonne storage for prescribed waste.	<p>The examples provided in the submission refer to process errors, infrequent maintenance practices and pollution incidents. These are compliance matters that would be addressed as they arise.</p> <p>No change warranted.</p>

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
National Pollutant Inventory (NPI)	1 – industry	Concerns about data duplication requirements under NPI and Commonwealth reporting requirements.	The EPA does not consider this additional reporting requirement as onerous on NPI reporting facilities.  No change warranted.
	2 – industry	Support introducing alternative estimation techniques, as long as industry sector input and review is obtained. Prefer consistent methodologies across all reporting requirements.	Noted.
	1 – industry	Introduction of alternative emission techniques – not supported.	The addition of an emission estimation technique for industry-wide facilities provides another option (in addition to existing NPI emission estimation technique manuals) to estimate emissions.  No change warranted.
	2 – industry	Addition of “annual substance usage” to data collected by reporting facilities – not supported.	The EPA does not consider this reporting requirement to be onerous on NPI reporting facilities.  The EPA reviewed the advice and it is not supported.
	2 – industry	Inclusion of financial capacity as a financial assurance consideration – <b>supported</b> .	Noted.
Financial Assurances	1 – industry	The EPA Financial Assurance Policy should recognise and give greater weight to financial risk when considering whether to impose a financial assurance, than the environmental risk.	The EPA’s Financial Assurance Policy outlines when and how the EPA will require a financial assurance and its Guideline on Estimating Financial Assurances provides a transparent and consistent method for estimating the financial assurances. These are available on the <a href="#">EPA website</a> and are prescribed under the POEO (General) Regulation 2022.  No change warranted.

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
Other	1 – government	EPA should remain the Appropriate Regulatory Authority (ARA) for non-scheduled activities.	<p>The EPA is retaining its role as ARA for non-scheduled activities as prescribed in section 12 of the POEO General Regulation 2022 (previously clause 118 of the POEO General Regulation 2021).</p> <p>No change needed.</p>
	1 – government	General Regulation should clearly state EPA has lead role in large-scale emergencies.	<p>The NSW State Emergency Management Plan provides a coordinated and comprehensive approach to emergency management in NSW. It is supported by sub-plans and supporting plans which detail the response to specific hazards and the roles and responsibilities of specific NSW Government agencies including the NSW EPA.</p> <p>No change needed.</p>
	1 – government	EPA should regulate the sale of building alarms.	<p>The EPA currently regulates the sale of building alarms. The new penalty offence will allow EPA officers only to issue a Penalty Infringement Notice for the sale of non-compliant building intruder alarms.</p> <p>No change needed.</p>
	1 – government	Environment Protection Licences should not be issued for activities comprising complying development.	<p>The EPA requires environment protection licences to be issued for activities in accordance with the POEO Act.</p> <p>No change warranted.</p>
	1 – individual	Not supportive of the proposed amendments overall.	No change warranted.

Topic	Number of times issue raised	Summary of key issues raised	EPA response/change to draft Regulation
	1 – government	Consider whether the thresholds for licensing fee and regulatory controls on dairies and other intensive livestock operations in the Sydney Drinking Water Catchment could be adjusted or increased to better protect water quality.	<p>The EPA is clarifying that for dairy accommodation, the lowest annual fee scale in the POEO General Regulation is based on the minimum capacity for when a licence is required. The EPA is not changing the licensing threshold.</p> <p>No change warranted.</p>
	1 – government	Consider broadening Section 92 of the POEO Act to include state-owned corporations and provide a mechanism for cost recovery of clean up action against the polluter in a similar manner to recovery of costs against the polluter in respect of oil spills from vessels.	<p>This request is outside the scope of this process. The comment has been forwarded for consideration in another process.</p> <p>No change warranted.</p>