



Minor Variation to the National Environment Protection (Air Toxics) Measure 2011

The National Environment Protection Council makes this minor variation to the National Environment Protection (Air Toxics) Measure under *the National Environment Protection Council Act 1994 (Cth)*, *National Environment Protection Council (New South Wales) Act 1995 (NSW)*, *National Environment Protection (Victoria) Act 1995 (Vic)*, *National Environment Protection Council (Queensland) Act 1994 (Qld)*, *National Environment Protection Council (Western Australia) Act 1996 (WA)*, *National Environment Protection Council (South Australia) Act 1995 (SA)*, *National Environment Protection Council (Tasmania) Act 1995 (Tas)*, *National Environment Protection Council (Northern Territory) Act (NT)*, and the *National Environment Protection Council Act 1994 (ACT)*.

Dated 16 September 2011

1 Name of Variation

This Minor Variation is the *Minor Variation to the National Environment Protection (Air Toxics) Measure 2011*.

2 Commencement

This Minor Variation commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Amendment of National Environment Protection (Air Toxics) Measure

Schedule 1 amends the National Environment Protection (Air Toxics) Measure.

Schedule 1

Amendments

(section 3)

Introductory Note

Section 22A of the *National Environment Protection Council Act 1994* and the equivalent provision of the corresponding Act of each participating State and Territory enables the National Environment Protection Council to make a minor variation to a national environment protection measure. This is a minor variation to the National Environment Protection (Air Toxics) Measure, which was made by the National Environment Protection Council on 3 December 2004.

The Minor Variation is to be implemented by the laws and other arrangements participating jurisdictions consider necessary pursuant to section 7 of the Commonwealth Act and the equivalent provision of the corresponding Act of each participating State and Territory.

[1] After subsection 9(3)

insert

- (4) A participating jurisdiction may only discontinue monitoring for a pollutant at a Stage 2 site if the requirements of the screening procedure at section 7 of Schedule 2 to this Measure are satisfied in relation to the site.

[2] Subsection 10(1)

omit

2922-1987

substitute

/NZS 3580.1.1:2007

[3] Subsection 15(2)

after “sites”, insert

and prescribes the screening procedure for discontinuing monitoring at Stage 2 sites

[4] Schedule 2, section 1

after “Procedures”, insert

(available at www.ephc.gov.au)

[5] After Schedule 2, subsection 3(vi)

insert

- (vii) While only one formal repeat assessment of Stage 1 sites is required prior to the review of this Measure, participating jurisdictions are encouraged to undertake more frequent reassessments as resources permit.
- (viii) Where a participating jurisdiction undertakes a reassessment in accordance with subsection (vii), if it is not reasonably practicable for the participating jurisdiction to undertake a quantitative assessment (as described in the Guidance Paper for Desktop Analysis and Investigation Procedures) the participating jurisdiction may undertake a qualitative assessment (as described in the Guidance Paper for Desktop Analysis and Investigation Procedures) based on the type of information outlined in subsections 3(iii) and 3(iv).

[6] After Schedule 2, subsection 4(v)

insert

- (vi) While only one formal repeat assessment of Stage 2 sites is required prior to the review of this Measure, participating jurisdictions are encouraged to undertake more frequent reassessments as resources permit.
- (vii) Where a participating jurisdiction undertakes a reassessment in accordance with subsection (vi), if it is not reasonably practicable for the participating jurisdiction to undertake a quantitative assessment (as described in the Guidance Paper for Desktop Analysis and Investigation Procedures) the participating jurisdiction may undertake a qualitative assessment (as described in the Guidance Paper for Desktop Analysis and Investigation Procedures) based on the type of information outlined in subsections 4(ii) and 4(iii).

[7] After Schedule 2, section 6

insert

7. Screening Procedure – Discontinuance of Monitoring at Stage 2 Sites

- (i) This section sets out the screening procedure for discontinuing monitoring at Stage 2 sites.
- (ii) Monitoring may only be discontinued at a Stage 2 site in accordance with this section.
- (iii) A participating jurisdiction may discontinue monitoring at a Stage 2 site if:
 - (a) the percentage of monitoring investigation levels at the site are at or below the relevant monitoring cut off limits in accordance with the acceptance limits for discontinuing future monitoring in Table 1 below; and

- (b) the participating jurisdiction reasonably expects that the percentage of monitoring investigation levels at the site will be consistently lower than the relevant monitoring cut off limits in accordance with Table 1 below.
- (iv) In determining whether subsection (iii) is satisfied with respect to toluene and xylenes, a participating jurisdiction must have regard to each of the relevant monitoring investigation levels that apply to those toxics.
- (v) In determining whether the percentage of monitoring investigation levels at a site can be reasonably expected to be consistently lower than the monitoring cut off limit, the participating jurisdiction must:
 - (a) be satisfied that the percentage of the monitoring investigation level will be lower than the monitoring cut off limit for a period of at least five years; and
 - (b) have regard to potential changes to the site over a period of ten years that may impact on that expectation.

Example

For the purpose of this subsection, examples of potential changes to the site that may impact on an expectation that the percentage of monitoring investigation levels will be lower than the monitoring cut off limit include:

- (a) predicted changes in fuel types and use;
- (b) increased industry or residential development; and
- (c) bushfire and fuel reduction burns.
- (vi) A participating jurisdiction that intends to discontinue monitoring at a Stage 2 site in accordance with this section must provide written reasons for discontinuing monitoring at that site to the Council, including the reasons the participating jurisdiction reasonably expects that the percentage of monitoring investigation levels at the site will be consistently lower than the relevant monitoring cut off limits in accordance with Table 1.

Table 1: Monitoring cut off limits for discontinuing future monitoring of Stage 2 sites

Pollutant	Minimum number of monitoring sites	Monitoring Cut Off Limit (% of MIL)
Benxo[a]pyrene, formaldehyde, toluene and xylenes	2 or more similar sites	55% for 1 year of data
	1 site	60% for 2 or more years of data
Benzene	2 or more similar sites	30% for 1 year of data
	1 site	35% for 2 or more years of data

- (vii) For the purpose of Table 1, two or more sites are similar sites if their location and sources of pollutants fall within the same classification as the desktop analysis and siting criteria under AS/NZS 3580.1.1:2007 Ambient Air - Guide for the siting of sampling units for peak monitoring stations.

[8] Schedule 3, section 1

omit

Monitoring

substitute

Subject to sections 3 and 3C below, monitoring

[9] Schedule 3, section 1

omit

Table 2 and Section 3 (1)

substitute

Table 1 and subsection 4(i)

[10] Schedule 3, section 2

omit

Monitoring

substitute

Subject to sections 3 and 3C below, monitoring

[11] Schedule 3, section 2

omit

Table 2 and Section 3 (2)

substitute

Table 1 and subsection 4(ii)

[12] After Schedule 3, section 3

insert

- 3A. The Council may approve alternative methods for monitoring air toxics, other than those allowed in section 3, if the Council considers those alternative methods appropriate for monitoring air toxics for the purposes of this Measure.
- 3B. The Council may only approve an alternative method for monitoring air toxics under section 3A if the method is a method developed or used by a recognised agency.

- 3C. If the Council has approved an alternative method for monitoring air toxics under section 3A, a participating jurisdiction may use that alternative method to monitor air toxics for the purposes of this Measure if it is not reasonably practicable for the participating jurisdiction to use a method in Table 1 of Schedule 3.
- 3D. For the purposes of section 3B, ***recognised agency*** means:
- (i) an environmental protection agency of a participating jurisdiction that is responsible for monitoring air toxics in that jurisdiction;
 - (ii) the California Environment Protection Agency;
 - (iii) the European Commission;
 - (iv) the International Standards Organisation;
 - (v) the United States Environment Protection Agency; or
 - (vi) Standards Australia.

[13] Schedule 4, Proforma Table 1

omit the Table; substitute

Proforma Table 1: Stage 2 Sites and Proposed Monitoring Program

Location of Stage 2 sites	Air toxics with possible elevated levels	Air toxics to be monitored	Proposed timeframe for monitoring	Estimate of size of population likely to be exposed and identification of susceptible groups.	Site description as in AS/NZS 3580.1.1:2007 Ambient Air - Guide for the siting of sampling units for peak monitoring stations

[14] Schedule 4, Proforma Table 2

omit the Table; substitute

Proforma Table 2: Monitoring results

	Site XXX	Site YYY	Site ZZZ
Air toxic			
Monitoring method			
National or international agency recommending this method			
Status of method within the recommending agency			
Scope of method			
Period of monitoring			
Frequency of monitoring			
Number of valid results			
Maximum 24-hour average concentration			
Annual average concentration (as arithmetic mean)			
Arithmetic Standard Deviation of 24-hour average concentrations			
Number of times monitoring investigation level exceeded*			

[15] Schedule 4, Part 2, subsection (v)

omit

AS 2922-1987

substitute

AS/NZS 3580.1.1:2007

[16] Schedule 4, Part 4, subsection (ii)

omit the subsection

[17] Schedule 4, 'Reporting Schedule' table

omit

7	Part 1: Identification of Sites (if additional Stage 1 and/or Stage 2 sites have been identified); Part 2: Reporting of Monitoring of Air Toxics; and Part 3: Reporting on Action and Assessment taken to manage air toxics (only required where exceedences of monitoring investigation levels have been reported).
8	Part 1: Identification of Sites (if additional Stage 1 and/or Stage 2 sites have been identified); Part 2: Reporting of Monitoring of Air Toxics; and Part 3: Reporting on Action and Assessment taken to manage air toxics (only required where exceedences of monitoring investigation levels have been reported).

substitute

7	<p>Part 1: Identification of Sites (if additional Stage 1 and/or Stage 2 sites have been identified);</p> <p>Part 2: Reporting of Monitoring of Air Toxics;</p> <p>Part 3: Reporting on Action and Assessment taken to manage air toxics (only required where exceedences of monitoring investigation levels have been reported); and</p> <p>Part 4: Reporting on any Stage 2 sites at which monitoring has ceased, including a summary of existing monitoring data for the site.</p>
8	<p>Part 1: Identification of Sites (if additional Stage 1 and/or Stage 2 sites have been identified);</p> <p>Part 2: Reporting of Monitoring of Air Toxics; and</p> <p>Part 3: Reporting on Action and Assessment taken to manage air toxics (only required where exceedences of monitoring investigation levels have been reported); and</p> <p>Part 4: Reporting on any Stage 2 sites at which monitoring has ceased, including a summary of existing monitoring data for the site.</p>