

SOUTH AUSTRALIA

**WATER RESOURCES (PENRICE EXEMPTION)
REGULATIONS 1996**

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SCHEDULE

The Dry Creek Proclaimed Wells Area

REGULATIONS UNDER THE WATER RESOURCES ACT 1990

Water Resources (Penrice Exemption) Regulations 1996

being

No. 168 of 1996: *Gaz.* 11 July 1996, p. 93¹

¹ Came into operation 11 July 1996: reg. 2.

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Water Resources (Penrice Exemption) Regulations 1996*.

Commencement

2. These regulations will come into operation on the day on which they are made.

Interpretation

3. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Water Resources Act 1990*;

"**annual report**" means a report prepared under Part 3 Division 3;

"**brine**" means a solution of salt in water;

"**Chapmans Creek Intake**" means that part of Chapmans Creek between lines at right angles to the creek through latitude 34°41'30" longitude 138°27'10" and latitude 34°41'20" longitude 138°27'32";

"**the conditions**" means the limitations and conditions to which the exemption is subject under Part 3;

"**Dry Creek aquifers**" means the first, second and third tertiary aquifers beneath the Dry Creek Proclaimed Wells Area;

"**Dry Creek Proclaimed Wells Area**" means the area defined in the schedule;

"**the exemption**" means the exemption granted to Penrice by these regulations;

"**Middle Beach Intakes**" means—

(a) that part of Salt Creek at Middle Beach between lines at right angles to the creek through latitude 34°36'45" longitude 138°24'45" and latitude 34°36'36" longitude 138°25'00"; and

(b) that part of an unnamed creek at Middle Beach between lines at right angles to the creek through latitude 34°36'56" longitude 138°24'25" and latitude 34°36'46" longitude 138°25'04";

"**Northern Adelaide Plains aquifers**" means the first, second and third tertiary aquifers beneath the Northern Adelaide Plains Proclaimed Wells Area;

"**Northern Adelaide Plains Proclaimed Wells Area**" means the Northern Adelaide Plains Proclaimed Region declared under section 41 of the *Water Resources Act 1976* (see *Gazette* 13 May 1976 p. 2459) and continued in force by clause 2 of Schedule 3 of the *Water Resources Act 1990*;

3.

"**Northern Intake**" means that part of Swan Creek between lines at right angles to the creek through latitude 34°34'23" longitude 138°21'42" and latitude 34°34'02" longitude 138°21'52";

"**Penrice**" means Penrice Soda Products Pty Ltd;

"**salt**" means sodium chloride;

"**T₁**" means the first tertiary aquifer beneath the Northern Adelaide Plains Proclaimed Wells Area or the Dry Creek Proclaimed Wells Area depending on the context;

"**T₂**" means the second tertiary aquifer beneath the Northern Adelaide Plains Proclaimed Wells Area or the Dry Creek Proclaimed Wells Area depending on the context;

"**T₃**" means the third tertiary aquifer beneath the Northern Adelaide Plains Proclaimed Wells Area or the Dry Creek Proclaimed Wells Area depending on the context.

**PART 2
THE EXEMPTION**

Extent of the exemption

4. (1) Subject to these regulations, Penrice is exempted from the operation of the following provisions of the Act:

section 34
section 40
Part 4 Division 3A.

(2) The exemption only applies in relation to water taken from the following watercourses and wells:

- (a) Chapmans Creek Intake;
- (b) Middle Beach Intakes;
- (c) Northern Intake;
- (d) wells situated in the Dry Creek Proclaimed Wells Area;
- (e) wells situated in the Northern Adelaide Plains Proclaimed Wells Area that provide access to T₃, but not to T₁ or T₂;
- (f) the following wells in the Northern Adelaide Plains Proclaimed Wells Area that provide access to T₁ or T₂ where the water is taken through the meters specified below:

Well No.	Meter No.
662831WW4356,	09;
662831WW4370,	122;
662831WW4371,	109;
662830WW13020,	108;
662831WW14027,	13,
such other wells and meters as are determined by the Minister.	

(3) The exemption only applies in relation to water taken for the purpose of producing brine or salt or for a purpose related to the production of brine or salt.

Termination of exemption

5. (1) Subject to this regulation, the Minister may terminate the exemption—

- (a) if an agreement that is required by the conditions to be in force is not in force; or
- (b) if Penrice is contravening or failing to comply, or has at any time in the past contravened or failed to comply, with any provision of the conditions or of an agreement that is required by the conditions to be in force.

(2) Termination under subregulation (1)(a) must be by at least three months written notice served on Penrice.

5.

(3) Before terminating the exemption under subregulation (1)(b) the Minister must, subject to subregulation (4), serve on Penrice at least three months written notice of his or her intention to terminate the exemption to give Penrice the opportunity to remedy the breach.

(4) Notice is not required under subregulation (3) if—

- (a) the breach is a breach of regulation 7(1)(b) (taking excess water in a financial year) or any other breach of a kind that cannot be remedied; or
- (b) Penrice has been guilty of a breach of the same kind on another occasion within the previous two years.

(5) Termination under subregulation (1)(b) must be by notice served on Penrice which—

- (a) may take effect immediately if notice served on Penrice under subregulation (3) in relation to the breach has expired; or
- (b) must be of three months duration if notice is not required under subregulation (3).

(6) A notice terminating the exemption cannot be served under subregulation (5) if—

- (a) Penrice has remedied the breach to the satisfaction of the Minister and had not been guilty of a breach of the same kind on another occasion in the previous two years; or
- (b) the prescribed period has elapsed since the time at which the Minister first knew, or could reasonably be expected to have first known, of the breach.

(7) Without limiting the generality of the expression "a breach of the same kind", a breach of the conditions or of an agreement that is required by the conditions to be in force will be taken to be of the same kind as an earlier breach if—

- (a) in the case of a breach of the conditions—both are breaches of the same paragraph of regulation 7(1);
- (b) in the case of a breach of an agreement—both are breaches of the same clause of the agreement.

(8) In this regulation—

"*the prescribed period*" is 12 months plus the period of the notice (if any) served on Penrice under subregulation (3) in relation to the breach.

Suspension of exemption

6. (1) Subject to this regulation, the exemption is suspended—

- (a) if there is a contravention of, or failure to comply with, any provision of the conditions or an agreement that is required by the conditions to be in force; or
- (b) if an agreement that is required by the conditions to be in force is not in force.

6.

(2) A suspension under subregulation (1)(a) commences at the expiration of 14 days after the breach of the conditions or agreement first occurred and continues until—

- (a) in the case of a breach that can be remedied—the Minister has served on Penrice a notice stating that Penrice has remedied the breach to the satisfaction of the Minister;
- (b) in the case of a breach that cannot be remedied—the Minister has served notice on Penrice terminating the suspension.

(3) A suspension under subregulation (1)(b) commences when the agreement ceases to be in force and continues until the making of a new agreement that satisfies the condition.

(4) Where a breach of the conditions or an agreement has occurred, the Minister may serve notice on Penrice under subregulation (2)(a) or (b) before the period of 14 days referred to in that subregulation has expired and, in that event, the exemption will not be suspended in respect of that breach.

**PART 3
THE CONDITIONS**

DIVISION 1—CONDITIONS

Conditions

7. (1) The exemption is subject to the following limitations and conditions:

- (a) that an agreement ratified by the Governor under Part 8A of the *Mining Act 1971* between Penrice and the Minister administering that Act is in force; and
- (b) the total volume of water taken by Penrice from T₁ and T₂ pursuant to the exemption in any financial year from wells in the Northern Adelaide Plains Proclaimed Wells Area must not exceed 1 177 255 kilolitres; and
- (c) Penrice must, in relation to taking water from wells—
 - (i) comply with the requirements of Part 3 Division 2 of the *Water Resources Regulations 1990* relating to meters as in force from time to time; and
 - (ii) comply with a notice served on Penrice by the Minister under Part 3 Division 2 of those regulations; and
 - (iii) permit the Minister to exercise powers under Part 3 Division 2 of those regulations,as though Penrice held a licence under Part 4 Division 3 of the Act and the water taken by Penrice pursuant to the exemption was taken pursuant to the licence; and
- (d) if the Minister has declared a levy under Part 4 Division 3A of the Act in respect of wells generally in the Northern Adelaide Plains Proclaimed Wells Area or an area that includes but extends beyond the Dry Creek Proclaimed Wells Area, Penrice must pay to the Minister the amount determined in accordance with subregulation (4) within one month after notice is served on Penrice by the Minister demanding payment of the amount; and
- (e) Penrice must comply with directions served on it by the Minister under Division 2; and
- (f) Penrice must within three months after the expiration of the 1996/1997 financial year and after the expiration of each succeeding financial year provide the Minister with a report prepared in accordance with Division 3; and
- (g) that an agreement complying with Division 4 between Penrice and the Minister is in force; and
- (h) Penrice must comply with a notice (if any) served on Penrice by the Minister under regulation 11(1).

8.

(2) Penrice is not in breach of subregulation (1)(b) if—

- (a) it inadvertently exceeds the volume specified in that paragraph by less than 500 kilolitres; and
- (b) it serves written notice on the Minister as soon as practicable after becoming aware of the mistake stating the volume of excess water taken.

(3) In relation to the next financial year, the volume of water specified in subregulation (1)(b) is reduced by the volume of water stated in a notice under subregulation (2).

(4) A meter supplied by the Minister under subregulation (1)(c) remains the property of the Minister unless the cost of supply and installation is paid by Penrice or the Minister transfers property in the meter to Penrice.

(5) The Minister may, on application by Penrice for the extension of the period referred to in subregulation (1)(d) or (1)(f) made before the expiration of the period, extend it in relation to a particular financial year.

(6) The amount referred to in subregulation (1)(d) is the amount of the levy that Penrice would be liable for under Part 4 Division 3A of the Act in respect of the water taken by Penrice from T₁ and T₂ by means of wells in the Northern Adelaide Plains Proclaimed Wells Area or the Dry Creek Proclaimed Wells Area on the assumption that—

- (a) the water taken by Penrice had been taken pursuant to a licence under Part 4 Division 3 of the Act; and
- (b) the quantity of water taken was within the water allocation of the licence.

(7) The condition referred to in paragraph (g) of subregulation (1) does not apply—

- (a) until the expiration of six months after these regulations come into operation (or such longer period as the Minister determines); or
- (b) until an agreement of the kind referred to in that paragraph comes into force,

whichever occurs first.

DIVISION 2—MONITORING

Monitoring

8. (1) The Minister may serve written directions on Penrice requiring Penrice to undertake investigations (including the taking of measurements and the conducting of tests) and to record information of the kind specified in the notice in relation to—

- (a) the quantity and quality of water taken from each well used by Penrice (and from each aquifer in the case of a well that provides access to more than one aquifer); and

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(b) the effect that the taking of water by Penrice has on each of the aquifers from which the water is taken; and

(c) whether Penrice has complied with the agreement referred to in Division 4.

(2) The Minister may, by subsequent directions served on Penrice under subregulation (1), vary or revoke previous directions under this regulation.

(3) Before serving directions on Penrice under subregulation (1), the Minister must consult with Penrice and endeavour to reach agreement with Penrice as to the nature and content of the directions.

DIVISION 3—ANNUAL REPORT

Annual Report

9. (1) An annual report must be prepared in respect of the 1996/1997 financial year and each succeeding financial year at the direction, on behalf, and at the expense, of Penrice by a person selected by the Minister who has qualifications and experience in hydrology or hydrogeology.

(2) The report must—

(a) state the quantity and quality of the water taken by Penrice during the financial year from each well (and from each aquifer in the case of a well that provides access to more than one aquifer); and

(b) include all information recorded by Penrice under Division 2; and

(c) assess the effect that the taking of the water has had on each of the aquifers concerned; and

(d) provide details of the failure of Penrice (if any) to comply with the agreement referred to in Division 4 during the financial year; and

(e) provide an assessment of the quantity of water that will be taken by Penrice during the succeeding financial year from each well (and from each aquifer in the case of a well that provides access to more than one aquifer).

(3) Penrice must provide the person selected to prepare the report with all the information recorded by Penrice under Division 2 and all other information available to Penrice that is reasonably required by the person.

(4) If Penrice refuses or fails to provide information required under subregulation (3), the person preparing the report must refuse to complete it.

(5) Before selecting a person to prepare the report, the Minister must consult with Penrice and endeavour to reach agreement with Penrice as to the person to be selected.

DIVISION 4—AGREEMENT LIMITING THE TAKING OF WATER

Agreement between the Minister and Penrice

10. (1) The Minister and Penrice may enter into a written agreement setting out limitations, restrictions or other requirements in relation to the taking of water to be complied with by Penrice to prevent, or reduce the likelihood of, the occurrence of the following contingencies:

- (a) that the rate at which water is taken by Penrice and all other users from the Northern Adelaide Plains aquifers or the Dry Creek aquifers is such that the aquifers, or any one of them, can no longer meet the demand or there is a likelihood that they, or one or more of them, will not be able to meet future demand;
- (b) that further reduction of the quantity of water in any of the Northern Adelaide Plains aquifers or the Dry Creek aquifers would be detrimental to the quality of the water in that aquifer.

(2) The Minister and Penrice may from time to time vary the agreement referred to in subregulation (1) by subsequent written agreement.

DIVISION 5—RESTRICTIONS

Restrictions

11. (1) If the Minister is satisfied by reference to an annual report or to an assessment made pursuant to subregulation (6) that one or both of the contingencies referred to in regulation 10(1) have occurred, or are likely to occur within the next four years, the Minister may serve notice on Penrice pursuant to subregulation (2).

(2) The notice—

(a) may restrict—

- (i) the rate; or
- (ii) the times; or
- (iii) both the rate and the times,

at which Penrice may take water from any of the Northern Adelaide Plains aquifers or the Dry Creek aquifers; and

(b) may prohibit Penrice from taking water from all or any of the Northern Adelaide Plains aquifers or the Dry Creek aquifers; and

(c) in relation to the taking of water from Northern Adelaide Plains aquifer T₁ or T₂ or from Dry Creek aquifer T₁ or T₂ may—

- (i) reduce the volume of water that may be taken in any financial year by means of all or any one or more of the wells by which Penrice is entitled to take the water; or
- (ii) attach conditions to the taking of the water; or

11.

- (iii) reduce the volume of water under subparagraph (i) and attach conditions under subparagraph (ii); and
- (d) must specify the date on which it comes into operation being at least ten months after it was served on Penrice or, if the only contingency on which the notice is based is that an aquifer is unlikely to be able to meet future demand, being at least 22 months after it was served on Penrice; and
- (e) must not operate for a period extending beyond the fourth anniversary of the date on which it comes into operation.

(3) The Minister may vary or revoke a notice under subregulation (1).

(4) The Minister may only serve notice on Penrice under subregulation (1) if he or she has consulted, and has endeavoured to reach agreement, with Penrice as to the need for the notice and, if the Minister decides that the notice is needed, the terms of the notice.

(5) The Minister may only vary a notice under subregulation (3) if he or she has consulted with Penrice on the terms of the variation and has endeavoured to reach agreement with Penrice on those terms.

(6) If the Minister believes on reasonable grounds that one or both of the contingencies referred to in regulation 10(1) have occurred in the current, or the immediately preceding financial year or are likely to occur before he or she receives the annual report for the current financial year, the Minister may appoint a person who has qualifications and experience in hydrology or hydrogeology to make an assessment as to whether the Minister should serve notice on Penrice under subregulation (1) in relation to that or those contingencies.

(7) Before appointing a person under subregulation (4), the Minister must consult with Penrice and endeavour to reach agreement with Penrice as to the person to be appointed.

(8) An assessment under subregulation (6) must not exceed the scope of a report under Division 3.

(9) The Minister may recover his or her costs relating to the preparation of the assessment from Penrice as a debt.

12.

PART 4
NON-APPLICATION OF SECTION 31

Non-application of s. 31

12. Section 31 of the Act does not apply to, or in relation to—

- (a)* the wells used by Penrice to take water from the Northern Adelaide Plains aquifers or the Dry Creek aquifers;
- (b)* Chapman's Creek Intake;
- (c)* Middle Beach Intakes;
- (d)* Northern Intake.

13.

SCHEDULE

The Dry Creek Proclaimed Wells Area

Commencing at latitude 34°50'02" longitude 138°35'47" then in a straight line to latitude 34°50'07" longitude 138°35'47" then in a straight line to latitude 34°50'07" longitude 138°35'23" then in a straight line to latitude 34°50'05" longitude 138°35'23" then in a straight line to the point of commencement.

14.

DRY CREEK PROCLAIMED WELLS AREA

[Map appears in *Gaz.* 11 July 1996, p. 93]

CHAPMANS CREEK INTAKE

[Map appears in *Gaz.* 11 July 1996, p. 93]

MIDDLE BEACH INTAKE

[Map appears in *Gaz.* 11 July 1996, p. 93]

NORTHERN INTAKE

[Map appears in *Gaz.* 11 July 1996, p. 93]