

NATIONAL GAS LAW

SECTION 277

INFRINGEMENT NOTICE ISSUED TO

INCITEC PIVOT LIMITED (ACN: 004 080 264)

**TO: INCITEC PIVOT LIMITED (ACN: 004 080 264)
Level 8, 28 Freshwater Place
SOUTHBANK VIC 3006**

Infringement Notice No.: AER14-2023

1. The Australian Energy Regulator (**AER**):
 - a. believes on reasonable grounds that Incitec Pivot Limited (**ACN: 004 008 264**) (**Incitec**), a Trading Participant within the meaning of the National Gas Rules (**NGR**) being the Schedule to the *National Gas (South Australia) Act 2008* (**NGL**), has breached rule 410(1) of the NGR in the manner set out in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - b. has decided to serve this Infringement Notice on Incitec under section 277 of the NGL.
2. Rule 410(1) of the NGR is a civil penalty provision within the meaning of the NGL.
3. The infringement penalty is \$67,800.

WHAT CAN INCITEC DO IN RESPONSE TO THIS INFRINGEMENT NOTICE?

4. Incitec can choose whether or not to comply with this Infringement Notice. If Incitec chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. Incitec is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If Incitec chooses to comply with this Infringement Notice, it must pay the infringement penalty to the AER, on behalf of the Commonwealth, by 26 June 2023, being not less than 28 days from the date of service of this Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with this Infringement Notice, payment must be received on or before 26 June 2023.

7. If Incitec pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the NGL.

HOW TO PAY AN INFRINGEMENT NOTICE

8. Incitec may pay the \$67,800 infringement penalty in three ways:
 - a. by cheque made out to the “ACCC Official Administered Account”,* enclosing a copy of this Infringement Notice to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

you should allow at least five business days for payment to be received

or

- b. by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER14-2023

you should allow at least two business days for payment to be received

or

- c. by credit card via the ACCC online payment system at www.accc.gov.au/payments.*

Please ensure that you include “AER14-2023” in the Payment Description field of your online payment to identify payment.

You should allow at least two business days for payment to be received.

- * The Australian Competition and Consumer Commission handles the receipt of infringement penalty payments for the AER on behalf of the Commonwealth of Australia. All payments received are paid into the Consolidated Revenue Fund.

9. Please allow sufficient time for your payment to be received within the compliance period.
10. Incitec will be issued with a Tax Invoice following payment of the infringement penalty.

DATE OF ISSUE: 29 May 2023

A handwritten signature in black ink, appearing to be 'CS', with a large loop for the 'S' and a smaller loop for the 'C'. The signature is positioned above a dotted line.

.....
Clare Savage
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION:

1. At all relevant times Incitec was a Trading Participant within the meaning of rule 364 of the NGR.

Relevant Rule

2. Rule 410(1) of the NGR provides:

If a Trading Participant expects to supply quantities of natural gas to, or withdraw quantities of natural gas from, a hub on a gas day, the Trading Participant must submit to AEMO in good faith:

(a) ex ante offers, ex ante bids or price taker bids for that gas day that reflect; or

(b) revisions to an earlier ex ante offer, ex ante bid or price taker bid for that gas day so as to reflect,

the Trading Participant's best estimate of the quantities of natural gas it expects to supply or withdraw on that gas day, as at each of the times specified in subrule (2).

3. Rule 410(2) of the NGR provides:

Any submissions required in accordance with subrule (1) must be made no later than:

(a) 7.5 hours after the start of the gas day that is 3 gas days before the relevant gas day; and

(b) if revised or not previously submitted, 7.5 hours after the start of the gas day that is 2 gas days before that gas day; and

(c) if revised or not previously submitted, 5.5 hours after the start of the gas day before that gas day.

4. Rule 410(1) of the NGR is a tier 1 civil penalty provision within the meaning of the NGL.

Relevant Conduct

5. On 25 January 2021, Incitec submitted a price taker bid to withdraw 38TJ of gas from the Brisbane hub on the gas day of 17 February 2021 (the **Relevant Gas Day**).
6. At the time of 5.5 hours after the start of the gas day before the Relevant Gas Day (**GD – 1**), Incitec expected to withdraw natural gas from the Brisbane hub on the Relevant Gas Day but 38TJ was not Incitec's best estimate of the quantity of gas it expected to withdraw.
7. Incitec did not submit in good faith a revision to its earlier price taker bid for the Relevant Gas Day by no later than 5.5 hours after the start of GD – 1 or at all.

8. It is alleged that, by failing to submit a revision to an earlier price taker bid in relation to the Relevant Gas Day, Incitec contravened rule 410(1) of the NGR, a civil penalty provision.