



New South Wales

Protection of the Environment Operations Further Amendment Regulation 1999

under the

Protection of the Environment Operations Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

BOB DEBUS, M.P.,
Minister for Corrective Services

Explanatory note

The object of this Regulation is to make a number of miscellaneous amendments to Schedule 1 to the *Protection of the Environment Operations Act 1997* and regulations under that Act.

Amendment of Schedule 1 to the Protection of the Environment Operations Act 1997

Schedule 1 to the Act specifies the activities that require a licence under the Act. Schedule 1 to this Regulation makes a number of minor changes to the description of those activities, including:

- (a) to make it clear that works involving the production of quicklime are included in the description of the activity of “cement works”, and

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- (b) to make changes to the description of the activity of “contaminated soil treatment works” consistently with a similar description of that activity as a designated activity for the purposes of the *Environmental Planning and Assessment Act 1979*.

Amendment of Protection of the Environment Operations (General) Regulation 1998

The Regulation is amended:

- (a) to extend the circumstances in which the licence fee period for a licence under the Act may be changed and to make it clear that the total amount of licence fees payable for the periods affected by the change are to remain the same, and
- (b) to extend the works that are designated as “scheduled development works” (for which a licence is required) to works on any premises at which scheduled activities are carried on that is designed to enable scheduled activities not authorised by a licence to be carried on at the premises (accordingly a licence will be required not only, as at present, if any such works are carried out at premises at which activities not requiring a licence are carried out, but also where a licensee wishes to carry out work for the purposes of undertaking a different scheduled activity than that authorised by the licence), and
- (c) to prescribe the Marine Parks Authority (instead of the local council) as the appropriate regulatory authority under the Act for non-scheduled activities in marine parks below mean high water mark, and
- (d) to make it clear that the EPA is the appropriate regulatory authority under the Act for premises occupied by, or activities carried on by, the Sydney Organising Committee for the Olympic Games, and
- (e) to make other minor, law revision and consequential changes.

Amendment of Protection of the Environment Operations (Savings and Transitional) Regulation 1998

The Regulation is amended:

- (a) to save the operation of licences that would otherwise expire on the day before the Act commences if an application for the renewal of any such licence had been duly made before its expiry, and
- (b) to ensure that the EPA remains the appropriate regulatory authority for the activities of the State and public authorities that become scheduled activities when the Act commences but did not previously require a licence from the EPA, and

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(c) to make other minor and consequential changes.

Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999

The Regulation is amended to enable a penalty notice to be issued with respect to an offence against section 39 (4) of the *Waste Minimisation and Management Act 1995* of failing to rectify a contravention of an Industry Waste Reduction Plan when called upon by the EPA to do so.

Amendment of Protection of the Environment Operations (Waste) Regulation 1996

The Regulation is amended to provide that certain requirements relating to non-licensed waste activities and non-licensed waste transporting do not come into effect until after 30 September 1999.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 5, 6, 47 (3) and Schedules 2 and 5.

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Clause 1 Protection of the Environment Operations Further Amendment
Regulation 1999

**Protection of the Environment Operations Further
Amendment Regulation 1999**

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations
Further Amendment Regulation 1999*.

2 Commencement

This Regulation commences on 1 July 1999.

**3 Amendment of Schedule 1 to the Protection of the Environment
Operations Act 1997**

The *Protection of the Environment Operations Act 1997* is amended
as set out in Schedule 1.

**4 Amendment of Protection of the Environment Operations (General)
Regulation 1998**

The *Protection of the Environment Operations (General)
Regulation 1998* is amended as set out in Schedule 2.

**5 Amendment of Protection of the Environment Operations (Savings
and Transitional) Regulation 1998**

The *Protection of the Environment Operations (Savings and
Transitional) Regulation 1998* is amended as set out in Schedule 3.

**6 Amendment of Protection of the Environment Operations (Penalty
Notices) Regulation 1999**

The *Protection of the Environment Operations (Penalty Notices)
Regulation 1999* is amended as set out in Schedule 4.

**7 Amendment of Protection of the Environment Operations (Waste)
Regulation 1996**

The *Protection of the Environment Operations (Waste) Regulation
1996* (as renamed by the *Waste Minimisation and Management
Amendment Regulation 1999*) is amended as set out in Schedule 5.

8 Notes

The explanatory note does not form part of this Regulation.

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Regulation 1999

Schedule 1 Amendment of Protection of the Environment Operations Act 1997

**Schedule 1 Amendment of Protection of the
Environment Operations Act 1997**

(Clause 3)

[1] Schedule 1 Schedule of EPA-licensed activities

Insert “(including works involving the production of quicklime)” after
“Cement works” in the matter relating to **Cement works**.

[2] Schedule 1, Cement works

Omit “of 150 tonnes per day or 30,000 tonnes per year” from paragraph
(2) of the matter relating to **Cement works**.

Insert instead “exceeding 150 tonnes per day or 30,000 tonnes per year”.

[3] Schedule 1, Contaminated soil treatment works

Omit “(other than by incineration) or store” from the matter relating to
Contaminated soil treatment works.

Insert instead “otherwise than by incineration and store”.

[4] Schedule 1, Contaminated soil treatment works

Insert at the end of the matter relating to **Contaminated soil treatment
works**:

For the purposes of this item, *contaminated soil* means soil that contains
a substance at a concentration above the concentration at which the
substance is normally present in soil from the same locality, being a
presence that presents a risk of harm to human health or any other aspect
of the environment. In this context, harm to the environment includes
any direct or indirect alteration of the environment that has the effect of
degrading the environment.

Schedule 2 Amendment of Protection of the Environment Operations (General) Regulation 1998

(Clause 4)

[1] Clause 7 Licence fee period

Omit clause 7 (5) and (6).

[2] Clause 7A

Insert after clause 7:

7A Changes in licence fee period

- (1) The EPA may, by notice in writing given to the licensee, change the licence fee period for a licence applicable under clause 7 for the purpose of providing a common licence fee period for different licences held by the same person or for other good cause. Any such notice has effect according to its tenor.
- (2) The EPA may change a licence fee period on the application of the licensee or on its own initiative. The EPA may decline to deal with any such application unless the licensee pays to the EPA such reasonable fee as the EPA determines to cover the cost of dealing with the application.
- (3) If a licence fee period is changed under this clause, the total of the licence fees for the licence in respect of all the periods affected by the change is, despite anything to the contrary in this Regulation, to be the same as it would have been if the change had not been made. Accordingly, the EPA is to make any necessary refunds in respect of fees already paid or require the payment of any additional amount of fees for relevant periods.
- (4) This clause extends to an existing licence referred to in clause 7 (4).

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Schedule 2 Amendment of Protection of the Environment Operations (General)
Regulation 1998

[3] **Clause 18 Determination of assessable loads of assessable pollutants**

Insert after clause 18 (7):

(8) **Transitional**

A licensee is, in relation to a licence fee period that begins during the period 1 July 1999 to 30 June 2000, required to make calculations (and carry out monitoring and other steps for calculations) under this clause with respect to the calculation of load based licensing fees for which a load based-fee would have been payable but for the prescription under clause 6 of a pollutant fee unit of \$0.

[4] **Clause 43A**

Insert before clause 44:

43A Additional matters included in definition of “scheduled development work” for which licence required

Pursuant to section 47 (3) of the Act, the following is specified as scheduled development work for the purposes of the Act:

Work at any premises at which scheduled activities of a class listed in Schedule 1 to the Act are carried on that is designed to enable scheduled activities of a different class not authorised by a licence to be carried on at the premises.

[5] **Clause 44 Commencement of licensing requirement for existing activities not previously required to be licensed: sec 52 (1)**

Insert at the end of the clause:

- (2) However, in respect of any work or activity that is associated with the work or activity to which an existing licence (within the meaning of the *Protection of the Environment Operations (Savings and Transitional) Regulation 1998*) applies, the prescribed period for the purposes of 52 (1) (a) of the Act is:
 - (a) the period after the commencement of the Act and before a replacement licence takes effect under clause

- 10 of that Regulation (being a replacement licence that includes that associated work or activity), or
- (b) 9 months,
- whichever is the shorter period.

[6] **Part 4.6**

Insert after Part 4.5:

Part 4.6 Appropriate regulatory authority

64 Marine Parks Authority

- (1) The Marine Parks Authority is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities in marine parks, except in relation to the following:
- (a) the exercise of functions under Chapter 3 of the Act,
 - (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises,
 - (c) premises occupied by, or activities carried on by, the State or a public authority,
 - (d) a matter for which a public authority (other than a local authority or the Marine Parks Authority) is declared under section 6 (3) of the Act to be the appropriate regulatory authority.
- (2) In this clause:
- marine park*** means a marine park within the meaning of the *Marine Parks Act 1997*, but does not include any part of a marine park:
- (a) that is on the landward side of the mean high water mark of the waters within the marine park, and
 - (b) that is within a local government area under the *Local Government Act 1993*.

Marine Parks Authority means the Marine Parks Authority constituted under the *Marine Parks Act 1997*.

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Schedule 2 Amendment of Protection of the Environment Operations (General)
Regulation 1998

65 SOCOG

- (1) The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for premises occupied by, or activities carried on by, SOCOG.
- (2) For the purposes of this clause, premises occupied by SOCOG include premises at which Olympic events are being conducted, and activities carried on by SOCOG include Olympic events.
- (3) In this clause:
Olympic event means:
 - (a) an event in the Sydney 2000 Olympic Games, or
 - (b) an event that SOCOG declares to be a test event for the Sydney 2000 Olympic Games.

SOCOG means the Sydney Organising Committee for the Olympic Games constituted by the *Sydney Organising Committee for the Olympic Games Act 1993*.

[7] Schedule 1, item [31] Contaminated Soil Treatment

Omit “otherwise than by incineration or store”.
Insert instead “otherwise than by incineration and store”.

[8] Schedule 1, item [31] Contaminated Soil Treatment

Omit “10 hectares”. Insert instead “3 hectares”.

[9] Schedule 1, item [31] Contaminated Soil Treatment

Insert at the end of the definition of *contaminated soil*:

In this context, harm to the environment includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

[10] Schedule 1, item [34] Electricity Generation

Omit the following:

Assessable Pollutants and Fee Rate Threshold Factors

nil

Schedule 3 Amendment of Protection of the Environment Operations (Savings and Transitional) Regulation 1998

(Clause 5)

[1] Clause 6A

Insert after clause 6:

6A Certain licences taken to be existing licences

- (1) For the purposes of this Regulation, a licence that expired on 30 June 1999 is taken to be an existing licence as if it had not expired on that date and had remained in force on the commencement of the Act, but only if:
 - (a) such a licence in force on that commencement would be an existing licence for the purposes of this Regulation, and
 - (b) an application for the renewal of the licence had been duly made before the commencement of this Act (whether in the form and manner required by law before that commencement or in such other form and manner as the EPA determines) and the requisite fee had been paid for the application for renewal.
- (2) In that case:
 - (a) an administrative fee under the Act is not payable in respect of the first licence fee period of the licence, and
 - (b) the application for renewal is not a pending application for the purposes of the Act and this Regulation.

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Schedule 3 Amendment of Protection of the Environment Operations (Savings and
Transitional) Regulation 1998

[2] Clause 11A

Insert after clause 11:

11A References in existing licences to expiry of the licence

A reference in an existing licence to the expiry of the licence is to be construed as a reference to the time at which the licence would have expired but for the enactment of the Act or such later time as the EPA determines by notice in writing to the licensee.

[3] Clause 14 Pending licence applications

Insert after clause 14 (1):

- (1A) A pending application (being an application for the renewal of an existing licence) is not to be dealt with by the appropriate regulatory authority if the authority determines that the activity to which it relates is authorised by the existing licence. The amount of any fee paid for the pending application is to be credited to the licensee and deducted from the first licence fee payable for the existing licence under the Act.

[4] Clause 16 Licences under Act for activities not previously required to be licensed

Insert after clause 16 (2):

- (3) Subclause (2) does not extend to:
- (a) premises occupied by, or activities carried on by, the State or a public authority, or
 - (b) a matter for which a public authority (other than the local authority) is declared under section 6 (3) of the Act to be the appropriate regulatory authority.

[5] Clause 17 Criminal and other proceedings

Insert at the end of clause 17 (1):

This subclause applies whether the proceedings were pending on the commencement of the Act or whether the proceedings are instituted after that commencement.

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Amendment of Protection of the Environment Operations (Savings and
Transitional) Regulation 1998

Schedule 3

[6] Clause 22 Other existing exemptions, notices, directions, orders or requirements

Insert after clause 22 (2):

- (3) Accordingly, any such notice, direction, order, requirement or exemption may be enforced in accordance with the provisions of the relevant repealed Act.

[7] Clause 26

Insert after clause 25:

26 Clean-up by public authorities in respect of previous incidents

Directions may be given, and action taken, under section 92 of the Act in respect of pollution incidents occurring before as well as after the commencement of the Act.

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Schedule 4 Amendment of Protection of the Environment Operations (Penalty
Notices) Regulation 1999

Schedule 4 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999

(Clause 6)

Schedule 1 Penalty notice offences

Insert before the matter relating to the Protection of the Environment
Operations (Waste) Regulation 1996:

Waste Minimisation and Management Act 1995

Column 1	Column 2	Column 3	Column 4	Column 5
Provision of the Act	Short description	Officer	Penalty (individuals)	Penalty (corporations)
Section 39 (4)	Fail to rectify breach of IWRP	2	\$300	\$600

Schedule 5 Amendment of Protection of the Environment Operations (Waste) Regulation 1999

(Clause 7)

[1] Clause 16 Requirements relating to non-licensed waste activities

Insert after clause 16 (4) (as inserted by the *Waste Minimisation and Management Amendment Regulation 1999*):

- (5) Subclauses (2) (d) and (e), (3) and (4) do not apply until after 30 September 1999.

[2] Clause 17 Requirements relating to non-licensed waste transporting

Insert after clause 17 (2) (as inserted by the *Waste Minimisation and Management Amendment Regulation 1999*):

- (3) Subclause (2) (g) does not apply until after 30 September 1999.

BY AUTHORITY