



New South Wales

Environmentally Hazardous Chemicals Regulation 2017

under the

Environmentally Hazardous Chemicals Act 1985

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmentally Hazardous Chemicals Act 1985*.

GABRIELLE UPTON, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to remake, with some amendments, the *Environmentally Hazardous Chemicals Regulation 2008*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation increases a number of fees payable under the *Environmentally Hazardous Chemicals Act 1985 (the Act)*.

This Regulation also makes provision with respect to the following:

- (a) the matters to be included in certain applications and notices made or issued under the Act,
- (b) the time within which appeals under the Act may be made,
- (c) the form of a receipt for property seized by authorised officers and the manner of advertising the proposed forfeiture of seized property,
- (d) the information to be included in registers under the Act,
- (e) the appointment of alternate members of the Hazardous Chemicals Advisory Committee,
- (f) the payment of fees,
- (g) savings and formal matters.

This Regulation is made under the *Environmentally Hazardous Chemicals Act 1985*, including sections 13 (2) and (3), 19 (2), 28 (1) (b) and (3) (a), 29A (2) (b) and (4) (a), 37 (1), 38 (1), 39 (1), 45 (3), 48 (3) (b), 52 (2) and 58 (the general regulation-making power) and clause 4 of Schedule 1.

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Environmentally Hazardous Chemicals Act 1985

1 Name of Regulation

This Regulation is the *Environmentally Hazardous Chemicals Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Environmentally Hazardous Chemicals Regulation 2008*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Environmentally Hazardous Chemicals Act 1985*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Application for assessment of prohibited activities

For the purposes of section 13 (3) of the Act, the prescribed kinds of data relating to a prescribed activity to be restricted are as follows:

- (a) a name, description or formula of a chemical in relation to which the prescribed activity is proposed to be carried on, or any other information which would reveal its chemical identity,
- (b) any physical or chemical data which would reveal the chemical identity of a chemical referred to in paragraph (a),
- (c) data from toxicological and ecotoxicological tests, but not the results of any such tests,
- (d) genuine manufacturing or other industrial or commercial secrets,
- (e) data which are the same as, or virtually the same as, or which include, data the disclosure of which has been restricted in accordance with the Act or any Act of the Commonwealth or of a State or a Territory relating to chemicals or chemical wastes.

5 Assessment of chemicals

(1) For the purposes of section 19 (2) of the Act, the prescribed particulars to be contained in a notice of intention to assess a chemical are as follows:

- (a) the chemical name or identity of the chemical,

- (b) the name and address of the person with whom submissions may be lodged and the date by which any such submissions must be lodged,
 - (c) the address at which data, if any, on the chemical may be inspected.
- (2) For the purposes of section 19 (2) of the Act, the prescribed time in relation to submissions is 30 days.

6 Notice of licence application

- (1) For the purposes of section 28 (3) (a) of the Act, the prescribed particulars to be included in a notice of an application for a licence are the particulars set out in subclause (3).
- (2) For the purposes of section 29A (4) (a) of the Act, the prescribed particulars to be included in a notice of an application for the transfer of a licence are the particulars set out in subclause (3) and the following:
 - (a) the name and address of the current holder of the licence,
 - (b) the address of the premises, if any, in respect of which the licence is held.
- (3) A notice of an application for a licence or a transfer of a licence is to include the following particulars:
 - (a) the applicant's name and address,
 - (b) the address of the premises, if any, in respect of which the application is made,
 - (c) the name or description of the chemical or declared chemical waste to which the application relates,
 - (d) details or a description of any chemical control order in force in respect of the chemical or declared chemical waste,
 - (e) a list and details of the prescribed activities for which the licence is sought.
- (4) Nothing in this clause requires:
 - (a) the inclusion in the notice of any matter that is required by the Act not to be disclosed, or
 - (b) the disclosure of any matter except in the manner in which it is required by the Act to be disclosed.

7 Time before appeal may be made

For the purposes of section 37 (1) of the Act, the prescribed time within which the Authority must notify the terms of a chemical control order made by it or its determination not to make any such order is 60 days.

8 Time within which appeal may be made

- (1) For the purposes of section 38 (1) of the Act, the prescribed time within which a person may appeal against a chemical control order or a determination made under section 20 (d) of the Act is 30 days.
- (2) For the purposes of section 39 (1) of the Act, the prescribed time within which a person may appeal against a decision of the Authority about a licence is 30 days.

9 Form of receipt

For the purposes of section 45 (3) of the Act, the prescribed form of receipt to be given by an authorised officer is the form in Schedule 1.

10 Registers of declared chemical wastes, chemical control orders and licences

For the purposes of section 52 (2) of the Act, the prescribed particulars to be included in a register are as follows:

- (a) in the case of the register of declared chemical wastes—a copy of every order in force under section 10 of the Act,
- (b) in the case of the register of chemical control orders—a copy of every chemical control order in force,
- (c) in the case of the register of licences—a certified copy of each licence currently in force.

11 Seized property

For the purposes of section 48 (3) (b) of the Act, the prescribed manner for advertising a notice of an application for forfeiture of seized property is by advertising in a newspaper circulating throughout New South Wales (whether published in print or on a publicly accessible website).

12 Alternate members of Hazardous Chemicals Advisory Committee

- (1) For the purposes of clause 4 of Schedule 1 to the Act, an alternative for a member of the Committee is to be nominated and selected in the same way as the member.
- (2) During the illness or absence of a member of the Committee, the alternate member has and may exercise the functions of the member.

13 Technology assessment

- (1) A person may apply to the Authority in the approved form for an assessment of any technology that the person proposes to use in relation to processing a chemical, or a declared chemical waste, that is the subject of a chemical control order.
- (2) The Authority may, in respect of the carrying out of any such assessment, charge the prescribed fee specified in Part 2 of Schedule 2.

14 Fees

- (1) The fees set out in Column 2 of the table in Part 1 of Schedule 2 are the prescribed fees for the matters set out opposite those fees in Column 1 of the table.
- (2) The Authority may at any time waive payment of part or all of a fee payable under this Regulation, whether in a particular case or in a class of cases.

15 Savings

Any act, matter or thing which had effect immediately before the repeal of the *Environmentally Hazardous Chemicals Regulation 2008* is taken to have effect under this Regulation.

Schedule 1 Form

(Clause 9)

Environment Protection Authority
Environmentally Hazardous Chemicals Act 1985 (section 45 (3))

Receipt for taking sample of substance or removing substance or container

This receipt is to:

[*name of occupier of premises*]

[*address of premises*]

I, [*name of authorised officer*], an authorised officer under the *Environmentally Hazardous Chemicals Act 1985*, acknowledge by this receipt that:

[*delete whichever of the following does not apply*]

I have today taken from the above premises a sample of the following substance in the following quantity:

[*name or description of substance*]

[*approximate quantity of substance*]

I have today removed from the above premises the following substance or the following containers:

[*name or description of substance*]

[*size and number of containers*]

[*signature of authorised officer*]

[*address of authorised officer*]

Schedule 2 Fees

(Clauses 13 and 14)

Part 1 Fees payable under the Act

Column 1	Column 2
Matter for which fee is payable	Fee \$
Application under section 13 (1) of the Act	1,935
Application for a new licence made under section 28 (1) of the Act on or after 1 September 2017 and on or before 31 December 2017	1,315
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2018 and on or before 31 December 2018	1,320
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2019 and on or before 31 December 2019	1,355
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2020 and on or before 31 December 2020	1,390
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2021 and on or before 31 December 2021	1,425
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2022	1,460
Application to renew a licence made under section 28 (1) of the Act on or after 1 September 2017 and on or before 31 December 2017	820
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2018 and on or before 31 December 2018	825
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2019 and on or before 31 December 2019	845
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2020 and on or before 31 December 2020	865
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2021 and on or before 31 December 2021	885
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2022	910
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 September 2017 and on or before 31 December 2017	655
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2018 and on or before 31 December 2018	660
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2019 and on or before 31 December 2019	680
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2020 and on or before 31 December 2020	695
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2021 and on or before 31 December 2021	715
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2022	730
Application to transfer a licence made under section 29A of the Act on or after 1 September 2017 and on or before 31 December 2017	150

Column 1	Column 2
Matter for which fee is payable	Fee \$
Application to transfer a licence made under section 29A of the Act on or after 1 January 2018 and on or before 31 December 2018	152
Application to transfer a licence made under section 29A of the Act on or after 1 January 2019 and on or before 31 December 2019	155
Application to transfer a licence made under section 29A of the Act on or after 1 January 2020 and on or before 31 December 2020	158
Application to transfer a licence made under section 29A of the Act on or after 1 January 2021 and on or before 31 December 2021	160
Application to transfer a licence made under section 29A of the Act on or after 1 January 2022	165

Part 2 Fees payable under this Regulation

Column 1	Column 2
Matter for which fee is payable	Fee \$
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 September 2017 and on or before 31 December 2017	9,680
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 January 2018 and on or before 31 December 2018	9,740
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 January 2019 and on or before 31 December 2019	9,985
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 January 2020 and on or before 31 December 2020	10,235
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 January 2021 and on or before 31 December 2021	10,490
Fee for carrying out of assessment of technology under clause 13 (2) on or after 1 January 2022	10,755
