



New South Wales

Protection of the Environment Operations (Control of Burning) Regulation 2000

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 the Environment

Explanatory note

This Regulation replaces the *Clean Air (Control of Burning) Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation:

- (a) imposes a general obligation to prevent or minimise air pollution when burning in the open or in an incinerator, and
- (b) prohibits the burning of certain articles such as tyres, and
- (c) imposes controls on burning in local government areas, and
- (d) provides for the EPA, and for local councils in certain cases, to grant approvals for burning in the open or in an incinerator, and
- (e) provides that any such approval by the EPA or local council is to be recorded in the public register kept under section 308 of the *Protection of the Environment Operations Act 1997*.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general regulation making power) and clause 6 of Schedule 2.

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Protection of the Environment Operations (Control of Burning) Regulation 2000

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Protection of the Environment Operations (Control of Burning) Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note. This Regulation replaces the *Clean Air (Control of Burning) Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approval means an approval in force under clause 9.

domestic waste means waste (other than vegetation) that is of a kind and quantity ordinarily generated on domestic premises.

domestic waste management services has the same meaning as in the *Local Government Act 1993*.

Note.

domestic waste management services, as defined in the *Local Government Act 1993*, means services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services.

the Act means the *Protection of the Environment Operations Act 1997*.

(2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Clause 4 Protection of the Environment Operations (Control of Burning)
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Part 1 Preliminary

4 Application of Regulation

This Regulation does not apply to or in respect of the following:

- (a) the carrying out of bush fire hazard reduction work under the *Rural Fires Act 1997* that, in the opinion of the authority authorised to carry out the work, or local authority requiring the work to be carried out, is reasonably necessary for the protection of life, property or the environment,
- (b) the destruction, by means of burning, of any prohibited plant or prohibited drug under the *Drug Misuse and Trafficking Act 1985*,
- (c) the destruction, by means of burning, of an animal that has died, or is reasonably suspected to have died, as the result of a disease proclaimed under the *Stock Diseases Act 1923* or an exotic disease within the meaning of the *Exotic Diseases of Animals Act 1991*.

Note. In addition to section 133 of the Act (which allows the EPA to prohibit the burning of fires in the open or in incinerators) and the prohibitions imposed by this Regulation, other legislative controls exist in relation to the lighting of fires (for example, see the *Rural Fires Act 1997*, the *Native Vegetation Conservation Act 1997* and the *Threatened Species Conservation Act 1995*).

Part 2 Control of burning generally

5 General obligation to prevent or minimise air pollution

- (1) A person who burns anything in the open or in an incinerator must do so by such practicable means as are necessary to prevent or minimise air pollution.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

- (2) Without limiting subclause (1), the means of preventing or minimising air pollution may include the following:
- (a) taking into account the potential for smoke impacting on any person due to wind direction and weather conditions,
 - (b) taking reasonable measures to ensure that the material being burnt is not wet,
 - (c) burning only material that is suitable for disposal by burning, having regard to possible effects on human health and the environment.

6 Prohibition on burning certain articles

- (1) A person must not burn a prohibited article:
- (a) in the open, or
 - (b) in an incinerator that is not licensed under the Act.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

- (2) For the purposes of this clause, the following articles are ***prohibited articles***:
- (a) tyres,
 - (b) coated wire,
 - (c) paint containers and residues,
 - (d) solvent containers and residues,
 - (e) timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP).

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Clause 6 Protection of the Environment Operations (Control of Burning)
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Part 2 Control of burning generally

- (3) It is not an offence under this clause to burn a tyre for the purposes of the giving of instruction in methods of fire fighting by an officer or member of a fire fighting authority, or by a fire control officer within the meaning of the *Rural Fires Act 1997*, when acting in his or her official capacity.

Part 3 Control of burning in local government areas

7 Offences

(1) A person must not burn anything:

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 1 of Schedule 1 except in accordance with an approval.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

(2) A person must not burn any vegetation:

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 2 of Schedule 1 except in accordance with an approval.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

(3) A person must not burn anything (other than vegetation):

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 3 of Schedule 1 except in accordance with an approval.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

Note. See clause 8 (4) which provides a specific exception to the offence under this subclause.

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Clause 8 Protection of the Environment Operations (Control of Burning)
Regulation 2000

Part 3 Control of burning in local government areas

8 Exceptions

- (1) It is not an offence under clause 7:
 - (a) to cook or barbecue in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities, so long as only dry seasoned wood, liquid petroleum gas (LPG), natural gas or proprietary barbecue fuel (including a small quantity of fire starter) is used, or
 - (b) to burn vegetation, in the course of carrying on agricultural operations, on premises on which the vegetation grew, including:
 - (i) the burning of vegetation for the purposes of clearing (other than for construction), or
 - (ii) the burning of stubble, orchard prunings, diseased crops, weeds or pest animal habitats on farms, or
 - (iii) the burning of pasture for regenerative purposes, or
 - (c) to burn anything for the purposes of the giving of instruction in methods of fire fighting by:
 - (i) an officer or member of a fire fighting authority, or
 - (ii) a fire control officer within the meaning of the *Rural Fires Act 1997*, or
 - (iii) an industrial fire control officer,when acting in his or her official capacity.
- (2) It is not an offence under clause 7 to burn domestic waste, before 1 September 2001, in an incinerator:
 - (a) that is installed in a residential building comprising home units, flats or apartments, and
 - (b) that was, immediately before 1 September 2000, in regular use.
- (3) It is not an offence under clause 7:
 - (a) to burn anything in an incinerator that is licensed under the Act, or
 - (b) to burn anything in an incinerator that:
 - (i) is equipped with a primary and secondary furnace, and

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- (ii) is designed, maintained and operated in such a manner that ensures the maintenance of appropriate temperatures for the complete combustion of anything that the incinerator is designed to burn and prevents the escape of sparks or other burning material, and
 - (iii) is equipped with suitable equipment that is designed, maintained and operated for the purposes of controlling air impurities in the exhaust gas once the incineration process has been completed, and
 - (iv) is not installed in a residential building comprising home units, flats or apartments.
- (4) It is not an offence under clause 7 (3) to burn domestic waste on residential premises on which the waste was generated if domestic waste management services are not available to those premises.

9 Approval for certain fires or incinerators

Note. An approval may be granted so as to permit burning in circumstances where it would otherwise be prohibited under clause 7.

However, even though this Regulation may permit the burning of fires in the open or in an incinerator in accordance with an approval or because of the operation of clause 8, burning may still be prohibited by an order of the EPA under section 133 of the Act.

- (1) The EPA may grant an approval for the purposes of this Regulation:
- (a) to any class of persons—by means of a notice published in the Gazette, or
 - (b) to any particular person—by means of a written notice given to the person (except in relation to an approval that would be granted to the person in accordance with subclause (2)).
- (2) The council of a local government area specified in Part 2 of Schedule 1 may grant an approval for the purposes of this Regulation in respect of the burning of dead and dry vegetation on the premises on which the vegetation grew in the local government area:
- (a) to any class of persons—by means of a notice published in a local newspaper circulating in the local government area, or
 - (b) to any particular person—by means of a written notice given to the person.

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Clause 9 Protection of the Environment Operations (Control of Burning)
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Part 3 Control of burning in local government areas

- (3) Before granting an approval for the purposes of this Regulation, the EPA or local council concerned must take the following matters into consideration:
- (a) the impact on regional air quality and amenity,
 - (b) the impact on local air quality and amenity,
 - (c) the feasibility of re-use, recycling or other alternative means of disposal,
 - (d) any opinions of the sector of the public likely to be affected by the proposed approval,
 - (e) in the case of an approval under subclause (2) (a)—any opinions of the EPA in relation to the proposed approval.
- (4) An approval:
- (a) is subject to such conditions (if any) as are specified in the notice by which the approval is granted, and
 - (b) may be amended or revoked by means of a notice given or published in the same way as the original notice granting the approval was given or published, and
 - (c) remains in force for a period of 12 months (or such other period as is specified in, or implied by, the approval) from the date it is granted unless sooner revoked by the authority that granted it.

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Clause 10

Miscellaneous

Part 4

Part 4 Miscellaneous

10 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.

11 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 3.

12 Existing approvals

- (1) Subject to subclause (2), an existing approval:
 - (a) is taken to be an approval granted by the EPA under this Regulation, and
 - (b) may be amended or revoked accordingly.
- (2) An existing approval does not have any effect to the extent that it is inconsistent with a provision of this Regulation.
- (3) In this clause:

existing approval means an approval:

 - (a) that was granted under clause 8 of the *Clean Air (Control of Burning) Regulation 1995*, and
 - (b) that was in force immediately before 1 September 2000.

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Schedule 1 Local government areas in which burning is prohibited

Schedule 1 Local government areas in which burning is prohibited

(Clauses 7 and 9 (2))

Part 1 Areas in which all burning (including burning of vegetation and domestic waste) is prohibited except with approval

Ashfield	Manly
Auburn	Marrickville
Bankstown	Mosman
Bathurst	Newcastle
Baulkham Hills	North Sydney
Blacktown	Orange
Botany	Parramatta
Burwood	Pittwater
Camden	Queanbeyan
Campbelltown	Randwick
Canterbury	Rockdale
Concord	Ryde
Drummoyne	Shellharbour
Fairfield	South Sydney
Gosford	Strathfield
Holroyd	Sutherland
Hunter's Hill	Sydney
Hurstville	Warringah
Kogarah	Waverley
Ku-ring-gai	Willoughby
Lake Macquarie	Woollahra
Lane Cove	Wollongong
Leichhardt	Wyong
Liverpool	

**Part 2 Areas in which burning of vegetation is prohibited
except with approval**

Albury	Leeton
Armidale Dumaresq	Lismore
Ballina	Macleay
Bingara	Mudgee
Blue Mountains	Muswellbrook
Brewarrina	Nambucca
Cessnock	Penrith
Cobar	Port Stephens
Cooma-Monaro	Quirindi
Coonabarabran	Tamworth
Dubbo	Tenterfield
Eurobodalla	Tumut
Goulburn	Wagga Wagga
Greater Lithgow	Warren
Greater Taree	Wellington
Gunnedah	Wingecarribee
Hastings	Wollondilly
Hawkesbury	Young
Hornsby	
Kiama	

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Schedule 1 Local government areas in which burning is prohibited

Part 3 Areas in which all burning (other than burning of vegetation) is prohibited except with approval or except for on site burning of domestic waste on residential premises where domestic waste management services are not available

Armidale Dumaresq	Lismore
Ballina	Maclean
Blue Mountains	Maitland
Brewarrina	Mudgee
Cessnock	Muswellbrook
Cobar	Penrith
Cooma-Monaro	Port Stephens
Coonabarabran	Severn
Cootamundra	Tallaganda
Dubbo	Tamworth
Eurobodalla	Temora
Goulburn	Tenterfield
Greater Lithgow	Tumut
Greater Taree	Urana
Gunnedah	Wagga Wagga
Hastings	Warren
Hawkesbury	Wellington
Hornsby	Wingecarribee
Inverell	Wollondilly
Junee	Young
Leeton	

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

Schedule 2

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

(Clause 10)

**Clause 63 Additional matters to be included in public register: sec
308**

Insert after clause 63 (b):

- (c) any approval granted under clause 9 of the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.

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Schedule 3 Amendment of Protection of the Environment Operations (Penalty
Notices) Regulation 1999

**Schedule 3 Amendment of Protection of the
Environment Operations (Penalty Notices)
Regulation 1999**

(Clause 11)

Schedule 1 Penalty notice offences

Omit the matter relating to the *Clean Air (Control of Burning) Regulation 1995*.

Insert instead:

**Protection of the Environment Operations (Control of Burning)
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Column 1	Column 2	Column 3	Column 4	Column 5
Provision of Regulation	Short description	Officer	Penalty (individuals)	Penalty (corporations)
Clause 5 (1)	Burn otherwise than to prevent or minimise air pollution	1, 2, 3	\$500	\$1,000
Clause 6 (1)	Burn prohibited article	1, 2, 3	\$500	\$1,000
Clause 7 (1)	Prohibited burning (Part 1 area)	1, 2, 3	\$500	\$1,000
Clause 7 (2)	Prohibited burning (Part 2 area)	1, 2, 3	\$500	\$1,000
Clause 7 (3)	Prohibited burning (Part 3 area)	1, 2, 3	\$500	\$1,000

BY AUTHORITY