



New South Wales

# Protection of the Environment Operations (General) Amendment (Burning of Bio-Material) Regulation 2003

under the

Protection of the Environment Operations Act 1997

Her 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

The objects of this Regulation are to prohibit the use of Australian native trees as fuel for electricity generating plants with a capacity of 200 kilowatts or more, and to enforce that prohibition by means of the establishment of record-keeping procedures to be followed in connection with generating plants that burn bio-material for fuel. A number of new offences are created, each of which can be dealt with by way of penalty notice.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general power to make regulations) and item 6A of Schedule 2 (the power to regulate fuel and fuel-burning equipment).

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Clause 1

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**Protection of the Environment Operations (General) Amendment (Burning of Bio-Material) Regulation 2003**

under the

Protection of the Environment Operations Act 1997

**1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations (General) Amendment (Burning of Bio-material) Regulation 2003*.

**2 Commencement**

This Regulation commences on 24 January 2003.

**3 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 1.

**4 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 2.

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## Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 1998

(Clause 3)

### Chapter 3B

Insert after Chapter 3A:

## Chapter 3B Burning of bio-material in electricity generating works

### 57L Definitions

In this Chapter:

*Australian native tree* means any tree of a species indigenous to Australia.

*electricity generating work* means a work (including associated facilities) that supplies, or is capable of supplying, more than 200 kilowatts of electricity.

*EPA guidelines* means guidelines in force under section 57Q.

*forest bio-material* means the bio-material comprised in trees.

*native forest bio-material* means the bio-material comprised in Australian native trees, other than:

- (a) bio-material obtained from:
  - (i) an authorised plantation within the meaning of the *Plantations and Reafforestation Act 1999*, or
  - (ii) an existing plantation within the meaning of section 9 of the *Plantations and Reafforestation Act 1999*, or
  - (iii) land on which exempt farm forestry (within the meaning of the *Plantations and Reafforestation Act 1999*) is being carried out, or
  - (iv) land on which ancillary plantation operations (within the meaning of section 9 of the *Plantations and Reafforestation Act 1999*) are being carried out, or

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Schedule 1

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- (b) sawdust or other sawmill waste, or
- (c) waste arising from wood processing or the manufacture of wooden products, other than waste arising from activities (such as woodchipping or the manufacture of railway sleepers) carried out at the location from which the Australian native trees are harvested.

**57M Native forest bio-material not to be used for electricity generation**

The occupier of any premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units,
- (b) in the case of an individual—200 penalty units.

**57N Record-keeping**

- (1) The occupier of any premises who causes or allows bio-material of any kind to be burned in any electricity generating work in or on those premises during a reporting period must keep records, as required by the EPA guidelines, in relation to fuel held during that period at those premises.
- (2) Within 60 days after the end of each reporting period, the occupier:
  - (a) must prepare reports to be prepared, as required by the EPA guidelines, in relation to:
    - (i) the use of the electricity generating work, and
    - (ii) the use of forest bio-material as fuel for the electricity generating work,during that period, and
  - (b) must cause any such report to be audited by an auditor having the qualifications set out in the EPA guidelines, and
  - (c) must send a copy of any such report, certified in accordance with the EPA guidelines, to the EPA.
- (3) The occupier must retain all records kept under this clause for at least 4 years after the end of the reporting period to which they relate.

- (4) The occupier is guilty of an offence if the requirements of this clause are not complied with.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units,
  - (b) in the case of an individual—100 penalty units.
- (5) This clause does not apply to an electricity generating plant in relation to any reporting period that commenced before 1 July 2003.
- (6) In this clause, *reporting period*, in relation to an electricity generating work, means:
- (a) in the case of a work the subject of an environment protection licence, the licence fee period in relation to that licence (within the meaning of Part 2.1), or
  - (b) in the case of any other work, the year ending 30 June.

**57O Reports to be made publicly available**

The EPA is to ensure that the reports sent to it under this Chapter are made available at its head office for inspection by members of the public.

**57P Offence of providing false information**

- (1) A person who, in or in connection with a requirement under this Chapter, provides any information, or makes any statement, that is false or misleading in a material particular is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units,
  - (b) in the case of an individual—100 penalty units.
- (2) It is a defence to a prosecution for an offence against this clause if the person establishes that the person had reasonable grounds to believe that the information or statement was true and had no reason to suspect that the information or statement was false or misleading in a material respect.

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**57Q EPA guidelines**

The EPA may, by order published in the Gazette, establish guidelines as to the keeping of records, and the preparation and auditing of reports, for the purposes of this Chapter.

**57R Appropriate regulatory authority**

Pursuant to section 6 (3) of the Act, the EPA is declared to be the appropriate regulatory authority for any matter arising under this Chapter.

**Note.** As a consequence of this declaration, a local authority is not the appropriate regulatory authority for any such matter for which (but for this clause) it would be the appropriate regulatory authority under section 6 (2) of the Act.

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

Schedule 2

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## **Schedule 2 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999**

(Clause 4)

### **Schedule 1 Penalty notice offences**

Insert at the end of the matter relating to the *Protection of the Environment Operations (General) Regulation 1998*, in Columns 1, 2, 3 and 4, respectively:

Clause 57M	2	\$1500	\$750
Clause 57N (4)	2	\$1500	\$750
Clause 57P (1)	2	\$1500	\$750

BY AUTHORITY