



Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

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 *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure* makes provision for controlled waste being moved between participating States and Territories to be properly identified, transported and otherwise handled. New South Wales is a participating State.

Part 6A of the *Protection of the Environment Operations (Waste) Regulation 1996* makes it an offence for certain persons to consign controlled waste from New South Wales to another participating jurisdiction without consignment authorisations and waste transport certificates in respect of the waste.

The object of this Regulation is to amend the *Protection of the Environment Operations (Waste) Regulation 1996*:

- (a) to make it an offence for a person to transport, for commercial purposes, controlled waste into New South Wales from another participating jurisdiction or out of New South Wales to another participating jurisdiction without a consignment authorisation and a waste transport certificate in respect of the waste, and
- (b) to make it an offence for a person to receive, for commercial purposes, controlled waste transported from another participating jurisdiction at premises in New South Wales without obtaining the consignment authorisation and the waste transport certificate in respect of the waste, and

2004 No 621

Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

Explanatory note

- (c) to enable the EPA to exempt persons from specified provisions of the *Protection of the Environment Operations Act 1997* or the regulations under that Act to the extent that the provisions apply to the interstate transport of controlled waste being transported between two specified geographical areas or being destined for direct reuse, and
- (d) to make amendments in the nature of law revision.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 286 and 323 (the general regulation-making power) and Schedule 2.

Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004*.

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

The *Protection of the Environment Operations (Waste) Regulation 1996* is amended as set out in Schedule 1.

2004 No 621

Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Part 6A, heading

Insert “**interstate**” after “**to**” in the heading to Part 6A.

[2] Clause 26A Definitions

Omit the definition of *controlled waste activity*.

[3] Clause 26A

Insert in alphabetical order:

direct reuse controlled waste means controlled waste referred to in clause 9 (b) of the Controlled Waste Transport Measure.

jurisdiction of destination means, in respect of the transport of controlled waste to a participating State, the participating State that is the ultimate destination of the transport.

[4] Clause 26A

Omit “Between” from the definition of *Controlled Waste Transport Measure*.

Insert instead “between”.

[5] Clauses 26B–26BD

Omit clause 26B. Insert instead:

26B Requirements relating to transportation of controlled waste to interstate destination

- (1) This clause applies to the transport of controlled waste, in the course of any activity carried on for business or other commercial purposes, from premises in New South Wales on which the waste is generated, used, stored or in any other way dealt with, in the course of any activity carried on for business or other commercial purposes, to a destination in a participating State other than New South Wales.
- (2) The occupier of the premises must:
 - (a) obtain a consignment authorisation in respect of the waste from the relevant agency in the jurisdiction of destination, and

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- (b) complete a waste transport certificate (in the form approved by the relevant authority in the jurisdiction of destination) in respect of the waste, and
 - (c) before the controlled waste is transported from the premises, ensure that the consignment authorisation and the waste transport certificate have been given to the person transporting the waste, and
 - (d) retain a copy of the consignment authorisation, and a copy of the waste transport certificate, for a period of not less than 3 years after the day on which the consignment authorisation is obtained, and
 - (e) must make each such document retained under paragraph (d) available for inspection by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

26BA Requirements relating to interstate transportation of controlled waste

- (1) This clause applies to a person (the *transporter*) who, in the course of any activity carried on for business or other commercial purposes, transports controlled waste:
 - (a) from New South Wales and through New South Wales in the course of transporting the waste to a destination in another participating State, or
 - (b) from another participating State into New South Wales and through New South Wales in the course of transporting the waste to a destination in New South Wales, or
 - (c) from another participating State into New South Wales and through New South Wales in the course of transporting the waste to a destination in another participating State.
- (2) The transporter:
 - (a) must carry, in the vehicle transporting the waste, the consignment authorisation and the waste transport certificate in respect of the waste, and
 - (b) must, at any time the transporter is in or in the vicinity of the vehicle transporting the waste, make the

2004 No 621

Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

Schedule 1 Amendments

consignment authorisation and the waste transport certificate available for inspection by an authorised officer on request, and

- (c) must not remove the waste, or cause the waste to be removed, from the vehicle transporting the waste unless:
 - (i) the occupier of the premises to which the waste is to be removed has obtained, in accordance with clause 26BB (a), the consignment authorisation and the waste transport certificate in respect of the waste, or
 - (ii) an authorised officer has requested the transporter to do so.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

26BB Requirements relating to receiving controlled waste transported into New South Wales

The occupier of premises in New South Wales at which controlled waste is received, in the course of any activity carried on for business or other commercial purposes, after being transported, in the course of any activity carried on for business or other commercial purposes, from a participating State other than New South Wales:

- (a) must not remove the waste, or cause the waste to be removed, from the vehicle that transported the waste unless he or she has obtained the consignment authorisation and the waste transport certificate in respect of the waste, and
- (b) must forward the waste transport certificate to the EPA within 14 days after receiving the waste, and
- (c) must retain the consignment authorisation, and a copy of the waste transport certificate, for a period of not less than 3 years after the day on which the consignment authorisation is obtained, and
- (d) must make each such document retained under paragraph (c) available for inspection by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

26BC Controlled waste exemptions

The EPA may, by order in writing served on the person specified in the order as the consignor of the waste, exempt a person from any provision or provisions of the Act or the regulations specified in the order to the extent that the provision or provisions apply to the person in respect of:

- (a) the transport of a consignment, or a class of consignments, specified in the order of controlled waste between a specified geographical area in New South Wales and a specified geographical area in another participating State and the carrying out of any activity incidental to such transport, or
- (b) the transport of a consignment, or a class of consignments, specified in the order of direct reuse controlled waste in the circumstances referred to in clause 26BA (1) (a)–(c) and the carrying out of any activity incidental to such transport.

26BD Administration of controlled waste exemptions

- (1) An exemption of a person by an order under clause 26BC (a) or (b):
 - (a) has effect in such circumstances (if any), and subject to such conditions (if any), as are specified in the order, and
 - (b) has effect on and from service of the order, and
 - (c) has effect only if a copy of the order is carried by the person transporting the consignment, or a consignment of the class of consignments, specified in the order, and
 - (d) has effect in respect of an exempted person so long as the exempted person complies with the other provisions of the Act or the regulations that apply to the person, and
 - (e) may be revoked by the EPA at any time by order in writing served on the person who was served with the exemption order.
- (2) A person who contravenes a condition of an exemption under clause 26BC is guilty of an offence.

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2004 No 621

Protection of the Environment Operations (Waste) Amendment (Controlled Waste) Regulation 2004

Schedule 1 Amendments

[6] Clause 26C Exemption relating to authorised interstate transporters of controlled waste

Omit “a copy of” from clause 26C (3) (a).

BY AUTHORITY
