



New South Wales

Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005

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

- (a) to define certain substances as **residue waste** for the purposes of a new Part (Part 2) of the *Protection of the Environment Operations (Waste) Regulation 1996*,
- (b) to provide that it is offence to apply any residue waste, or to cause or permit such waste to be applied, to any land that is used for a purpose related to the growing of vegetation,
- (c) to provide that it is a defence to a prosecution for the new offence if the defendant establishes that the waste that was applied to the land had been lawfully sold as a soil improving agent or a trace element product within the meaning of the *Fertilisers Act 1985*,
- (d) to provide for the granting of exemption, both general and specific, in relation to activities involving residue waste.

The Regulation also makes a consequential amendment to the *Protection of the Environment Operations (Penalty Notices) Regulation 2004* to provide that the new offence is a penalty notice offence.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 222–227 (that relate to penalty notices), section 286 (that provides for exemptions by regulation) and section 323 (the general regulation-making power) and clause 5 (Waste) of Schedule 2 (Regulation-making powers) to that Act.

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Clause 1 Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005

Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005*.

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.

3 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 2004

The *Protection of the Environment Operations (Penalty Notices) Regulation 2004* is amended as set out in Schedule 2.

Schedule 1 **Amendment of Protection of the Environment Operations (Waste) Regulation 1996**

(Clause 2)

Part 2

Insert after Part 1:

Part 2 **Prohibition against using certain waste for growing vegetation**

4 **Commencement of Part**

This Part commences on 1 December 2005.

5 **Definitions**

In this Part:

apply waste to land includes (but is not limited to) application by:

- (a) spraying, spreading or depositing the waste on the land, or
- (b) ploughing, injecting or mixing the waste into the land.

residue waste means any of the following substances (and includes any substance incorporating, mixed with or made from any of the following substances):

- (a) fly ash or bottom ash from any furnace,
- (b) lime or gypsum residues from any industrial or manufacturing process,
- (c) residues from any industrial or manufacturing process that involves the processing of mineral sand,
- (d) substances that have been used as catalysts in any oil refining or other chemical process,
- (e) foundry sands and foundry filter bag residues,
- (f) residues from any industrial or manufacturing process that involves the refining or processing of metals or metallic products,
- (g) any substance that is hazardous waste, industrial waste or Group A waste.

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Schedule 1

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

6 Residue waste not to be applied to certain land

- (1) A person must not apply residue waste, or cause or permit residue waste to be applied, to any land that is used for the purpose of growing vegetation, including but not limited to land used for agricultural, horticultural, silvicultural, pastoral or environmental rehabilitation purposes.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence against this clause if the person establishes that the waste that was applied to the land had been lawfully sold as a soil improving agent or a trace element product within the meaning of the *Fertilisers Act 1985*.

7 Exemptions relating to residue waste

- (1) The EPA may from time to time exempt a person from any one or more of the following provisions in relation to an activity or class of activities relating to residue waste, or a class of residue waste:
 - (a) sections 47–49 and 88 of the Act,
 - (b) the provisions of Schedule 1 to the Act,
 - (c) clauses 6, 15, 16 and 17 of this Regulation.
- (2) An exemption under this clause may be a **general exemption** or a **specific exemption**.
- (3) A general exemption may be given by way of notice published in the Gazette. A specific exemption may be given after an application is made to the EPA.
- (4) An application for a specific exemption must:
 - (a) be in the approved form, and
 - (b) be accompanied by such fee (if any) as the EPA may determine, and
 - (c) be accompanied by such information, documents or evidence as may be required by the EPA for the purposes of determining whether the exemption should be given.
- (5) An exemption under this clause is subject to such conditions as may be imposed by the EPA.
- (6) In giving an exemption under this clause, the EPA is required to identify a person (or class of persons) to whom the exemption relates (***the responsible person***).

- (7) A general exemption may be amended or revoked by the EPA by way of notice published in the Gazette.
- (8) A specific exemption may be amended or revoked by the EPA by way of written notice given to the responsible person.
- (9) If an exemption is given under this clause, the responsible person must comply with the conditions to which the exemption is subject.
Maximum penalty: 400 penalty units in the case of a corporation,
200 penalty units in the case of an individual.

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Schedule 2

Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 2004

Schedule 2 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 2004

(Clause 3)

Schedule 1 Penalty notice offences

Insert in appropriate order in Columns 1, 2 and 3 in the matter relating to the *Protection of the Environment Operations (Waste) Regulation 1996*:

Clause 6 (1)

1, 2

\$750

BY AUTHORITY