



New South Wales

Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006

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 2005* to:

- (a) revise the formula for calculating contributions payable under section 88 of the *Protection of the Environment Operations Act 1997 (the Act)*, and simplify the process for making deductions from any such contributions, and
- (b) establish a scheme to promote waste reduction by councils and to allow the EPA to make payments to councils that achieve certain waste reduction goals, and
- (c) revise the record keeping requirements of the occupier of a scheduled waste facility, and
- (d) clarify the material that may be considered by the EPA when determining the contribution payable by the occupier of a scheduled waste facility where that occupier has not kept adequate records, and
- (e) allow the occupier of a waste facility that receives waste to appoint an authorised agent to act as a consignor of waste in respect of waste transported from that facility.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 88, 286 and 323 (the general regulation-making power) and clauses 5 and 5A of Schedule 2 to the Act.

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Clause 1 Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006

Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006*.

2 Commencement

This Regulation commences on 1 July 2006.

3 Amendment of Protection of the Environment Operations (Waste) Regulation 2005

The *Protection of the Environment Operations (Waste) Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 4 Definitions

Insert in alphabetical order:

operational purpose, in relation to the use of waste, means:

- (a) in the case of any waste—the purpose of the final capping of works, or
- (b) in the case of waste that consists solely of virgin excavated natural material—the purpose of placing the material below the water table to rehabilitate a sand mine,

in accordance with the conditions of an environment protection licence.

qualified surveyor means:

- (a) a person registered as a land surveyor under the *Surveying Act 2002*, or
- (b) such other class of surveyor as the EPA may approve.

[2] Clause 4A

Insert after clause 4:

4A Payment of contributions

- (1) For the purposes of section 88 (3) (a) of the Act, each of the following is a prescribed manner for the payment of a contribution payable under that section:
 - (a) payment by cheque,
 - (b) payment by electronic funds transfer.
- (2) For the purposes of section 88 (3) (b) of the Act, the period of 60 days after the end of each month is prescribed as the time within which the contribution payable by an occupier is to be paid.

[3] Clause 5

Omit the clause. Insert instead:

5 Contributions payable in relation to scheduled waste facilities where adequate records kept

- (1) For the purposes of section 88 (2) of the Act, the following contributions are prescribed as the contributions required to be paid by the occupiers of scheduled waste facilities:
 - (a) the SMA amount for the year in which the waste is received for each tonne of waste that is received in that year at a scheduled waste facility located in the SMA,
 - (b) the ERA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located in the ERA, and
 - (ii) that has been generated outside the SMA,
 - (c) the SMA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located in the ERA, and
 - (ii) that has been generated in the SMA,
 - (d) the SMA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located outside the SMA and the ERA, and
 - (ii) that has been generated in the SMA,
 - (e) the ERA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located outside the SMA and the ERA, and
 - (ii) that has been generated in the ERA.
- (2) The SMA amount is as follows:
 - (a) for a year, beginning on or after 1 July 2006 and ending on or before 30 June 2011—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (4),
 - (b) for a year, beginning on or after 1 July 2011—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (6).

- (3) The ERA amount is as follows:
- (a) for a year, beginning on or after 1 July 2006 and ending on or before 30 June 2013—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (5),
 - (b) for a year, beginning on or after 1 July 2013—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (6).

- (4) The formula is:

$$G = (P + C) \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

G is the amount, in dollars and cents, being calculated.

P is the SMA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

C is:

- (a) for a calculation made for a year ending on or before 30 June 2010—\$7.00, or
- (b) for a calculation made for the year ending on 30 June 2011—\$6.00.

A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (5) The formula is:

$$H = (M + R) \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

H is the amount, in dollars and cents, being calculated.

M is the ERA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

R is:

- (a) for a calculation made for a year ending on or before 30 June 2011—\$7.50, or
- (b) for a calculation made for a year beginning on or after 1 July 2011 and ending on or before 30 June 2013—\$1.50.

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A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (6) The formula is:

$$S = T \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

S is the amount, in dollars and cents, being calculated.

T is the SMA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (7) The SMA amount and the ERA amount are to be rounded to the nearest 10 cents, and if the amount to be rounded is 5 cents, rounded up.
- (8) The amount of the contribution is to be adjusted in accordance with clause 11A.
- (9) If, at any time, the Australian Statistician issues a CPI number in substitution for a CPI number previously issued, the issue of the later CPI number is to be disregarded for the purposes of this clause.

[4] Clause 6 Contributions payable in relation to scheduled waste facilities where inadequate records kept

Omit clause 6 (3). Insert instead:

- (3) The EPA is to estimate the tonnage of waste at the scheduled waste facility taking into consideration any or all of the following as the EPA considers appropriate in the circumstances:
- (a) a volumetric survey of the facility concerned carried out by a qualified surveyor,
 - (b) available records in respect of the facility concerned,
 - (c) any information provided by an authorised officer who has seen or inspected the facility,

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- (d) any other information available to the EPA, such as video monitoring records, and records kept by persons not involved with the operation of the facility concerned.

[5] Clause 6 (4) (a) and (b)

Omit “registered surveyor” wherever occurring.

Insert instead “qualified surveyor”.

[6] Clause 10 Certain types of waste exempted from calculation of contributions

Omit clause 10 (1) (e).

[7] Clause 10 (2) (d) (i) and (iii)

Omit “or recycled or reprocessed” wherever occurring.

Insert instead “or recovered, recycled or processed”.

[8] Clause 10 (2) (d) (ii)

Omit “reprocessing or recycling”.

Insert instead “recovering, recycling or processing”.

[9] Clause 10 (2) (e) (ii)

Omit “reprocessing” wherever occurring. Insert instead “processing”.

[10] Clause 10 (4)

Omit the subclause. Insert instead:

- (4) Despite subclause (1), waste is not exempt from the calculation of the contribution payable by the occupier of a scheduled waste facility if the occupier fails to comply with any requirement under subclause (2) or (3) with respect to the waste.

[11] Clauses 11 and 11A

Omit clause 11. Insert instead:

11 Approval of operational purpose

- (1) An occupier of a scheduled waste facility may apply to have the use of waste for an operational purpose approved under this clause:
- (a) before the waste has been used for an operational purpose, or
- (b) after the waste has been used for an operational purpose.

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- (2) An application to have the use of waste for an operational purpose approved by the EPA must include the following:
 - (a) in the case of an application of the kind referred to in subclause (1) (a)—a plan for the use of the waste for an operational purpose,
 - (b) in the case of an application of the kind referred to in subclause (1) (b)—a report on the use of the waste for an operational purpose,
 - (c) such other information as the EPA may require to approve the application.
- (3) The EPA may, on the application of the occupier of a scheduled waste facility, approve the use of waste for an operational purpose at the facility whether or not the waste has already been used for an operational purpose.
- (4) If the EPA approves an operational purpose on an application made under this clause, the EPA must issue a certificate to the occupier of the scheduled waste facility certifying that the use of waste for an operational purpose has been approved.
- (5) A certificate issued under subclause (4) must specify:
 - (a) the scheduled waste facility to which the certificate applies, and
 - (b) the operational purpose for which the waste is to be, or has been, used, and
 - (c) the amount of waste approved for the operational purpose, and
 - (d) in the case of an application of the kind referred to in subclause (1) (a)—the period in which the waste is to be used for that operational purpose, and
 - (e) any conditions relating to the use of waste for that operational purpose.

11A Deductions from contributions

(1) Certain occupiers may make deductions

The occupier of a scheduled waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section:

- (a) an amount in respect of waste that has been or is to be used for an approved operational purpose by the occupier (*approved operational purpose deduction*), or

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- (b) an amount in respect of waste received by the occupier that the occupier has transported to another place as referred to in subclause (3) (*transported waste deduction*).

(2) **Waste used for an approved operational purpose**

For the purpose of subclause (1) (a), waste has been or is to be used for an *approved operational purpose* if:

- (a) a certificate has been issued under clause 11 in respect of the operational purpose, and
- (b) the waste has been or is to be used in accordance with the requirements specified in the certificate pursuant to clause 11 (5).

(3) **Transported waste deductions**

A transported waste deduction is available to the occupier of a scheduled waste facility in respect of:

- (a) waste that has been:
 - (i) recovered, recycled or processed at that facility to the extent or in the manner specified in the guidelines (if any) published or approved by the EPA from time to time for the purpose of this clause, and
 - (ii) transported to another place for a lawful use, or
- (b) waste that has been transported to another facility for lawful recovery, recycling, processing or disposal.

(4) **No deduction available in respect of certain waste**

A deduction is not available in respect of waste that:

- (a) has already been exempted, in accordance with clause 10, from the calculation of the contribution otherwise payable by the occupier, or
- (b) was received at the facility more than 24 months before the date of the deduction.

(5) An approved operational purpose deduction is not available in respect of waste that:

- (a) exceeds the amount of waste specified in a certificate issued under clause 11, or
- (b) is used otherwise than in accordance with the requirements specified in the certificate pursuant to clause 11 (5).

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(6) **Amount of deduction**

A deduction under this clause is to be calculated on the basis of the rate of contribution that was applicable at the time that the waste was received at the waste facility concerned.

(7) **Disallowance of deductions**

The EPA may, by notice in writing to the occupier of a scheduled waste facility, disallow the whole or any part of a deduction made by the occupier under this clause, if the EPA is satisfied:

- (a) the occupier was not allowed to make the deduction, or
- (b) the deduction is not available in respect of the waste.

(8) A notice under subclause (7) may require the occupier to:

- (a) increase a specified contribution payable by the occupier by the whole or such part of the deduction made by the occupier under this clause as the EPA may determine, or
- (b) pay to the EPA an amount equal to the whole or such part of the deduction made by the occupier under this clause as the EPA may determine.

(9) **Rebate where deduction exceeds contribution**

If the amount of a deduction to which the occupier of a scheduled waste facility is entitled under clause 11A exceeds the amount of the contribution payable by the occupier under section 88 of the Act, the occupier is entitled to a rebate of the amount by which the deduction exceeds the contribution.

[12] **Clause 12**

Omit the clause. Insert instead:

12 Records to be kept by waste facilities

(1) **Records for waste and other material received at scheduled waste facility**

For each delivery of waste and other materials received at a scheduled waste facility, the occupier of the facility is to record the following information:

- (a) the amount and type of waste and other material delivered,
- (b) the date the delivery was made,
- (c) the registration number of the vehicle making the delivery,
- (d) the particulars of where on the site the waste and other materials were placed at the facility,

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- (e) the particulars of any waste received that is exempted under clause 10 from the calculation of the contribution payable by the facility.

(2) **Records for waste used for an operational purpose at a scheduled waste facility**

For all waste used at a scheduled waste facility for an operational purpose, the occupier of the facility is required to record the following information:

- (a) the nature of the operational purpose for which the waste was used,
- (b) the amount and type of waste used,
- (c) the date the waste was used,
- (d) particulars of any certificate issued under clause 11 relating to the use of waste for an operational purpose.

(3) **Records for waste and other material stockpiled at a scheduled waste facility**

For all waste and other material stockpiled at a scheduled waste facility, the occupier of the facility is required to record the following information:

- (a) a unique identification number for each stockpile,
- (b) the quantity and type of waste or other material held in each stockpile as at 30 June and 31 December of each year,
- (c) the quantity and type of waste or other material that is added to or removed from each stockpile each day.

(4) **Records for waste and other materials transported from a scheduled waste facility for use, recovery, recycling, processing or disposal at another place**

For each load of waste and other materials transported by vehicle from a scheduled waste facility for use, recovery, recycling, processing or disposal at another place, the occupier of the facility is to record the following information:

- (a) the amount and type of waste, waste derived material and other material contained in the load,
- (b) the date the load was transported from the facility,
- (c) the registration number of the vehicle transporting the load,

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- (d) details of the recycling, mixing, blending or processing (if any) applied to the waste leaving the facility including the composition as a proportion of waste and other material in any waste derived material in the load,
- (e) the address of the place to which any load of waste was transported.

(5) **Records to be accurate**

The occupier of a scheduled waste facility that is required to record information under this clause is required to ensure that the records required to be kept under this clause are accurate and are retained for a period of at least 3 years from the date on which the record is made.

(6) **Records to be kept in accordance with guidelines**

The occupier of a scheduled waste facility that is required to record information under this clause is required to ensure that the records required to be kept under this clause are kept in accordance with the guidelines (if any) published by the EPA, from time to time, for the purposes of this subclause.

(7) **Records to be made available on request**

The occupier of a scheduled waste facility that is required to record information under this clause is required to make any such records available for inspection by an authorised officer on request.

(8) **Occupier must comply with record keeping requirements**

An occupier of a scheduled waste facility that fails to comply with any requirement of this clause is guilty of an offence.

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

[13] **Clause 14 Volumetric surveys**

Omit “registered surveyor” from clause 14 (1).

Insert instead “qualified surveyor”.

[14] Clause 17 Definitions

Omit the definition of *consignor*. Insert instead:

consignor of waste, in relation to waste that is transported from a waste facility means:

- (a) if the occupier of the facility has not appointed an authorised agent under clause 27—the occupier of the facility, or
- (b) if the occupier of the facility has appointed an authorised agent under clause 27 in relation to the waste—that authorised agent.

[15] Clause 17, definition of “receiver”

Omit the definition. Insert instead:

receiver of waste means the occupier of a waste facility that has received waste from a consignor of waste.

[16] Clause 17, definition of “waste transport certificate”

Omit the definition. Insert instead:

waste transport certificate means a waste transport certificate in a form approved by the EPA for the purposes of this Part.

[17] Clause 21 Producers and receivers of waste taken to be consignors (unless authorised agent appointed by producer)

Omit the clause.

[18] Clause 23 Copy of waste transport certificate to be given to occupier of waste facility

Omit “a producer of waste”. Insert instead “the occupier of a waste facility”.

[19] Clause 23

Omit “the producer”. Insert instead “the occupier”.

[20] Clause 27 Appointment of authorised agent

Omit “A producer of waste” from clause 27 (1).

Insert instead “An occupier of a waste facility”.

[21] Clause 27 (2)

Omit “a producer of waste”. Insert instead “the occupier of a waste facility”.

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- [22] **Clause 27 (2) (b)**
Omit “the producer” wherever occurring. Insert instead “the occupier”.
- [23] **Clause 27 (4) (b)**
Omit “the producer of the waste as the producer’s”.
Insert instead “the occupier of the waste facility as the occupier’s”.
- [24] **Clause 27 (5)**
Omit “a producer of waste”. Insert instead “the occupier of a waste facility”.
- [25] **Clause 27 (5)**
Omit “the producer” wherever occurring. Insert instead “the occupier”.
- [26] **Clause 28 Approval of authorised agents**
Omit “producer” from clause 28 (6). Insert instead “occupier”.
- [27] **Clause 29 Issue of consignment authorisations**
Omit clause 29 (3) (b). Insert instead:
(b) the transportation of waste from one or more waste facilities.
- [28] **Clause 32 Record keeping requirements relating to occupiers of waste facilities**
Omit “A producer of waste”.
Insert instead “An occupier of a waste facility”.
- [29] **Clause 32 (a)**
Omit “producer”. Insert instead “occupier of a waste facility”.
- [30] **Clause 33 Record keeping requirements relating to consignors of waste**
Omit “producers of waste” wherever occurring in clause 33 (b) and (c).
Insert instead “occupiers of waste facilities”.
- [31] **Clause 40 Offences relating to false information about waste**
Omit “A producer” from clause 40 (1).
Insert instead “An occupier of a waste facility, or a”.
- [32] **Clause 40 (2)**
Omit “a producer of waste”. Insert instead “an occupier of a waste facility”.

[33] Clause 40 (2)

Omit “the producer”. Insert instead “the occupier”.

[34] Part 5A

Insert after Part 5:

Part 5A Waste performance improvement scheme**46A Definitions**

In this Part:

eligible council, in respect of any year, means a local council whose application for a waste performance improvement payment has been approved under clause 46C for that year.

regulated area means the extended regulated area and the Sydney metropolitan area.

waste performance improvement guidelines means the guidelines in force from time to time under clause 46B.

waste performance improvement payment means a waste performance improvement payment under this Part.

year has the same meaning as in Part 2.

46B Waste performance improvement guidelines

- (1) The EPA may, from time to time, issue guidelines establishing performance standards to be met by local councils in relation to the use, recovery, recycling, processing and disposal of waste.
- (2) The EPA may from time to time amend, revoke or replace the waste performance improvement guidelines.
- (3) The waste performance improvement guidelines in force for the time being must be made publicly available in such manner as the EPA thinks appropriate.
- (4) In the event of any inconsistency between a provision contained in the waste performance improvement guidelines and this Regulation, the latter is to prevail.

46C Application for waste performance improvement payments

- (1) Commencing 1 July 2006, a local council within the regulated area may each year apply to the EPA for a waste performance improvement payment in relation to its compliance with the waste performance improvement guidelines.

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- (2) An application under this clause:
- (a) must be made in such manner and form as is prescribed by the waste performance improvement guidelines, and
 - (b) must be accompanied by such evidence as is required by the waste performance improvement guidelines, and
 - (c) must be lodged with the EPA within the time specified by notice in writing by the EPA.

46D Determination of application

- (1) The EPA may determine an application for a waste performance improvement payment by:
- (a) approving the application, or
 - (b) refusing the application.
- (2) The EPA may approve an application only if the local council has, in the opinion of the EPA, complied with the requirements of the waste performance improvement guidelines.

46E Calculation of amount of waste performance improvement payment

- (1) The amount of the waste performance improvement payment to which an eligible council is entitled in any year is to be calculated in accordance with the following formula:

$$D = (B \times (\$3 \times N)) \times \left(\frac{P}{T}\right)$$

where:

D is the amount of the payment, in dollars and cents.

B is the total amount of household waste, in tonnes, disposed of during the previous year by or on behalf of local councils within the regulated area (whether or not they are eligible councils) as calculated by the EPA.

N is:

- (a) for the year ending 30 June 2007—1, or
- (b) for the year ending 30 June 2008—2, or
- (c) for the year ending 30 June 2009—3, or
- (d) for the year ending 30 June 2010—4, or
- (e) for any year ending after 30 June 2010—5.

P is the population of the local council's local government area.

T is the total population of the local government areas of all eligible councils within the regulated area.

- (2) For the purposes of subclause (1), the population of a local government area is the population of the area, as estimated by the Australian Statistician in the Australian Statistician's latest publication on regional population growth in Australia.

46F Payment of waste performance improvement payments

The Director-General of the Department of Environment and Conservation must pay to an eligible council any waste performance improvement payment to which the council is entitled under this Part.

[35] Clause 49 Requirements relating to transportation of waste generally

Omit clause 49 (c). Insert instead:

- (c) any waste that is transported by a vehicle must be covered during its transportation unless the waste consists solely of tyres or scrap metal (or both),

[36] Clause 53 Savings and transitional provisions

Insert after clause 53 (3):

- (4) Part 2, as in force immediately before the amendment of that Part by the *Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006*, continues to apply in respect of waste received at a scheduled waste facility on or before 30 June 2006.

[37] Schedule 1 Waste to which waste tracking requirements apply

Omit "Asbestos" from Part 1 of the Schedule.

[38] Schedule 1, Part 2

Insert in alphabetical order:

Asbestos