



New South Wales

Protection of the Environment Operations Legislation Amendment (Control of Burning) 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 incorporate in the *Protection of the Environment Operations (Clean Air) Regulation 2002* such provisions of the *Protection of the Environment Operations (Control of Burning) Regulation 2000* as are not spent and are required to be retained. The latter Regulation is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation is concerned with the control of burning generally. It also makes particular provision for the control of burning in specified local government areas, and makes minor consequential amendments to the *Protection of the Environment Operations (Clean Air) Regulation 2002*.

This Regulation also makes a consequential amendment to the *Protection of the Environment Operations (General) Regulation 1998* and consequential amendments to the *Protection of the Environment Operations (Penalty Notices) Regulation 2004*.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 222 (Penalty notice offences) and 286 (Exemptions by regulation) and section 323 and Schedule 2 (the general regulation-making powers).

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Clause 1 Protection of the Environment Operations Legislation Amendment (Control of Burning) Regulation 2006

Protection of the Environment Operations Legislation Amendment (Control of Burning) Regulation 2006

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations Legislation Amendment (Control of Burning) Regulation 2006*.

2 Commencement

This Regulation commences on 1 September 2006.

3 Amendment of Protection of the Environment Operations (Clean Air) Regulation 2002

The *Protection of the Environment Operations (Clean Air) Regulation 2002* is amended as set out in Schedule 1.

4 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.

5 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 3.

Schedule 1 Amendment of Protection of the Environment Operations (Clean Air) Regulation 2002

(Clause 3)

[1] Part 2A

Insert after clause 6:

Part 2A Control of burning**Division 1 Preliminary****6A Definitions**

In this Part:

approval means an approval in force under clause 6G.**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.**6B Application of Part**

This Part 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*,
- (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 Part, other legislative controls exist in relation to the lighting of fires (for example, see the *Rural Fires Act 1997*, the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1995*).

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Division 2 Control of burning generally

6C 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 having regard to:
 - (i) wind direction, and
 - (ii) weather conditions, and
 - (iii) the length of time that the material being burnt is likely to burn,
 - (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.

6D 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 authorised or controlled by a licence under the Act.

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

- (2) 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.
- (3) The EPA may, by written notice given to a public authority, exempt the public authority from the operation of subclause (1).
- (4) The EPA may grant such an exemption only in relation to the burning of prohibited articles in the course of any of the following activities:

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- (a) research to improve safety in relation to the flammability of materials and smoke reduction (including the development of testing procedures),
 - (b) training of fire-fighters,
 - (c) rating of the effectiveness of fire extinguishers and fire suppression systems,
 - (d) testing undertaken to certify that manufactured or imported products comply with Australian Standards or International Standards or meet any legislative requirements placed on them.
- (5) An exemption referred to in subclause (3):
- (a) is subject to any conditions that may be specified in the written notice by which it is granted, and
 - (b) may be amended or revoked by means of a further written notice given to the public authority, and
 - (c) unless sooner revoked by the EPA, remains in force:
 - (i) for a period of 12 months from the date it is granted, or
 - (ii) for such other period as is specified in the written notice by which it is granted, and
 - (d) extends to apply to any person acting at the direction of the public authority to which it is granted.
- (6) In this clause, *prohibited article* means any of the following:
- (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).

Division 3 Control of burning in local government areas

6E Offences

- (1) A person must not burn anything:
 - (a) in the open, or

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- (b) in an incinerator,
in a local government area specified in Part 1 of Schedule 8
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 8
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 8
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 6F (4) which provides a specific exception to the offence under this subclause.

6F Exceptions

- (1) It is not an offence under clause 6E:
 - (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 6E:
 - (a) to burn anything in an incinerator that is authorised or controlled by a licence under the Act, or
 - (b) to burn anything in an incinerator that:
 - (i) is equipped with a primary and secondary furnace, and
 - (ii) is designed, maintained and operated in 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.
- (3) It is not an offence under clause 6E to burn air impurities by the process known as flaring if the flare is designed, maintained and operated so as to prevent or minimise air pollution.
Note. See clause 41 for an operating requirement for flares.
- (4) It is not an offence under clause 6E (3) to burn domestic waste on residential premises in a local government area specified in Part 3 of Schedule 8, being premises on which the waste was generated, if domestic waste management services are not available to those premises.

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6G 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 6E.

However, even though this Part 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 6F, burning may still be prohibited by an order of the EPA under section 133 of the Act or by an order under the *Rural Fires Act 1997*.

- (1) The EPA may grant an approval for the purposes of this Part:
 - (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 8 may grant an approval for the purposes of this Part 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.
- (3) Before granting an approval for the purposes of this Part, 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.

[2] Clause 46 Exemption from prescribed standards of concentration for the emission of smoke

Omit clause 46 (2) (b) and (c). Insert instead:

- (b) training of fire-fighters,
- (b1) rating of the effectiveness of fire extinguishers and fire suppression systems,
- (c) testing undertaken to certify that manufactured or imported products comply with Australian Standards or International Standards or meet any legislative requirements placed on them.

[3] Clause 46 (4) (d)

Insert at the end of clause 46 (4) (c) (ii):

, and

- (d) extends to apply to any person acting at the direction of the public authority to which it is granted.

[4] Clause 46 (5)

Omit the subclause.

[5] Clause 58

Insert after clause 57:

58 Savings relating to repealed Regulation

- (1) Any act, matter or thing that had effect under the *Protection of the Environment Operations (Control of Burning) Regulation 2000* immediately before the repeal of that Regulation is taken to have effect under this Regulation.
- (2) In particular, an approval granted by the EPA under clause 9 of that Regulation, being an approval that was in force immediately before the commencement of this clause:
 - (a) is taken to be an approval granted under Part 2A of this Regulation, and
 - (b) may be amended or revoked accordingly.

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Schedule 1 Amendment of Protection of the Environment Operations (Clean Air) Regulation 2002

[6] Schedule 8

Insert after Schedule 7:

**Schedule 8 Local government areas in which
burning is prohibited**

(Clauses 6E, 6F (4) and 6G (2))

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

| | |
|-------------------|---------------------|
| Ashfield | Lake Macquarie City |
| Auburn | Lane Cove |
| Bankstown City | Leichhardt |
| Blacktown City | Liverpool City |
| Botany Bay City | Manly |
| Broken Hill City | Marrickville |
| Burwood | Mosman |
| Camden | Newcastle City |
| Campbelltown City | North Sydney |
| Canada Bay | Parramatta City |
| Canterbury City | Pittwater |
| Fairfield City | Queanbeyan City |
| Gosford City | Randwick City |
| Holroyd City | Rockdale City |
| Hunter's Hill | Ryde City |
| Hurstville City | Shellharbour City |
| Kogarah | Strathfield |
| Ku-ring-gai | Sutherland Shire |
| City of Sydney | Wollongong City |
| Warringah | Woollahra |
| Waverley | Wyong |
| Willoughby City | |

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

| | |
|---------------------|-------------------------|
| City of Albury | Hornsby |
| Armidale Dumaresq | Kiama |
| Ballina | Leeton |
| Balranald | Lismore City |
| Bathurst Regional | City of Lithgow |
| Baulkham Hills | Liverpool Plains |
| Bellingen | Maitland City |
| Bland | Mid-Western Regional |
| Blue Mountains City | Muswellbrook |
| Boorowa | Nambucca |
| Bourke | Narrabri |
| Brewarrina | Narromine |
| Cessnock City | Orange City |
| Clarence Valley | Penrith City |
| Cobar | Port Macquarie-Hastings |
| Coffs Harbour City | Port Stephens |
| Cooma-Monaro Shire | Tamworth Regional |
| Coonamble | Tumut |
| Dubbo City | Uralla |
| Eurobodalla | Wagga Wagga City |
| Goulburn Mulwaree | Warren |
| Greater Taree City | Wellington |
| Gunnedah | Wentworth |
| Gwydir | Wingecarribee |
| Hawkesbury City | Wollondilly |
| Hay | |

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Part 3 Areas in which all burning (other than burning of vegetation) is prohibited except with approval or in relation to certain domestic waste

| | |
|---------------------|-------------------------|
| City of Albury | Inverell |
| Armidale Dumaresq | Junee |
| Ballina | Kiama |
| Balranald | Kyogle |
| Bathurst Regional | Leeton |
| Baulkham Hills | Lismore City |
| Bland | City of Lithgow |
| Blue Mountains City | Maitland City |
| Boorowa | Mid-Western Regional |
| Bourke | Muswellbrook |
| Brewarrina | Narrabri |
| Cessnock City | Narromine |
| Clarence Valley | Oberon |
| Cobar | Orange City |
| Coffs Harbour City | Palerang |
| Cooma-Monaro Shire | Penrith City |
| Coonamble | Port Macquarie-Hastings |
| Cootamundra | Port Stephens |
| Dubbo City | Tamworth Regional |
| Eurobodalla | Temora |
| Glen Innes Severn | Tumut |
| Goulburn Mulwaree | Upper Hunter Shire |
| Greater Hume Shire | Urana |
| Greater Taree City | Wagga Wagga City |
| Gunnedah | Warren |
| Guyra | Wellington |
| Gwydir | Wentworth |
| Hawkesbury City | Wingecarribee |
| Hay | Wollondilly |
| Hornsby | |

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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 4)

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

Omit clause 63 (1) (c) and (d). Insert instead:

- (c) any approval granted under clause 6G or 31 of the *Protection of the Environment Operations (Clean Air) Regulation 2002*,

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

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

(Clause 5)

[1] Schedule 1 Penalty notice offences

Insert in appropriate order in the matter relating to the *Protection of the Environment Operations (Clean Air) Regulation 2002* in Columns 1, 2, 3 and 4, respectively:

| | | | |
|---------------|------|-------|--------|
| Clause 6C (1) | 1, 2 | \$500 | \$1000 |
| Clause 6D (1) | 1, 2 | \$500 | \$1000 |
| Clause 6E (1) | 1, 2 | \$500 | \$1000 |
| Clause 6E (2) | 1, 2 | \$500 | \$1000 |
| Clause 6E (3) | 1, 2 | \$500 | \$1000 |

[2] Schedule 1, matter relating to Protection of the Environment Operations (Control of Burning) Regulation 2000

Omit the matter.

BY AUTHORITY
