



New South Wales

Protection of the Environment Operations Amendment (Miscellaneous) Regulation 2009

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*.

CARMEL TEBBUTT, MP
Minister for Climate Change and the Environment

Explanatory note

The objects of this Regulation are as follows:

- (a) to no longer require an environment protection licence (*a licence*) for bitumen mixing, concrete batching, mobile plant activities and transport of waste and to require a licence for contaminated groundwater treatment and the transport of trackable waste,
- (b) to clarify the circumstances in which a licence is required for dangerous goods production, toxic substance production, chemical production, waste disposal and waste processing,
- (c) to reduce the amount of general waste that is required to be on a site for a licence to be required for the recovery of general waste,
- (d) to increase the pollutant fee unit amount in respect of a licence for the period commencing on 1 July 2008 from \$36.75 to \$38.61,
- (e) to permit the EPA to grant an exemption under the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008* by publishing the exemption in the Gazette,
- (f) to provide additional requirements in relation to the transport of waste including requirements that clinical waste be transported in leak proof containers and liquid waste not be mixed with other waste and to give the EPA the power to grant exemptions from certain of those requirements.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 5 (3) and 323 (the general regulation-making power) and Schedule 2 (in particular clause 5).

2009 No 210

Clause 1 Protection of the Environment Operations Amendment (Miscellaneous)
Regulation 2009

**Protection of the Environment Operations Amendment
(Miscellaneous) Regulation 2009**

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations Amendment (Miscellaneous) Regulation 2009*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation takes effect on the day on which it is published on the NSW legislation website.
- (2) Schedules 1 [1], [2], [7] and [12]–[14] and 4 take effect on 30 June 2009.

Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

- [1] **Schedule 1 Scheduled activities**
Omit “clauses 46 and” from the note to clause 1 (2). Insert instead “clause”.
- [2] **Schedule 1, clauses 4 and 46**
Omit the clauses.
- [3] **Schedule 1, clause 8 (1)**
Omit “of, or blending, recovering, using” from the definition of *dangerous goods production*.
Insert instead “, blending, recovering or using of,”.
- [4] **Schedule 1, clause 8 (1)**
Insert “, blending, recovering or using” after “commercial production” in the definition of *toxic substance production*.
- [5] **Schedule 1, clause 8, Table**
Insert “, blend, recover or use” after “produce” in the matter relating to dangerous goods production and in the matter relating to toxic substance production in Column 2 of the Table.
- [6] **Schedule 1, clause 9 (1)**
Omit the definition of *general chemicals storage*. Insert instead:
general chemicals storage, meaning the storage or packaging of chemical substances, other than the following substances, in containers, bulk storage facilities or stockpiles:
(a) petroleum or petroleum products,
(b) chemicals classified as dangerous goods in the *Transport of Dangerous Goods Code*,
(c) radioactive substances within the meaning of the *Radiation Control Act 1990*.
- [7] **Schedule 1, clause 13 (1)**
Omit the subclause. Insert instead:
(1) This clause applies to *concrete works*, meaning the production of concrete products, but does not include the production of pre-mixed concrete (concrete batching).

2009 No 210

Protection of the Environment Operations Amendment (Miscellaneous)
Regulation 2009

Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

[8] Schedule 1, clause 15A

Insert after clause 15:

15A Contaminated groundwater treatment

- (1) This clause applies to *contaminated groundwater treatment* meaning the treatment of contaminated water.
- (2) The activity to which this clause applies is declared to be a scheduled activity if it has the capacity to treat more than 100 megalitres per year of contaminated water.

[9] Schedule 1, clause 34

Omit “5,000 tonnes” from the matter relating to the recovery of general waste in Column 2 of the Table to the clause.

Insert instead “2,500 tonnes or 2,500 cubic metres, whichever is the lesser.”.

[10] Schedule 1, clause 39 (2) (a)–(f)

Omit “landfill” wherever occurring.

[11] Schedule 1, clauses 40 (2) and 41 (2) (a)

Omit “stormwater” wherever occurring. Insert instead “groundwater”.

[12] Schedule 1, clause 48

Omit the clause. Insert instead:

48 Transport of trackable waste

- (1) This clause applies to the following activities:
 - (a) *transport of category 1 trackable waste*, meaning the transport of category 1 trackable waste within New South Wales,
Note. This activity covers any transport of category 1 trackable waste within New South Wales, whether or not the transport of the waste is confined to New South Wales.
 - (b) *transport of category 2 trackable waste*, meaning the transport of category 2 trackable waste from New South Wales to a participating State, into New South Wales from a participating State or through New South Wales from one participating State to another.
- (2) However, this clause does not apply to the transport of waste that is excluded from the application of Part 3 of the *Protection of the Environment Operations (Waste) Regulation 2005 (the Waste Regulation)* by clause 19 of that Regulation.

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- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.
- (4) In this clause, *participating State* has the same meaning as it has in Part 3 of the Waste Regulation.

Table

Column 1	Column 2
Activity	Criteria
transport of category 1 trackable waste	involves the transport of more than 200 kilograms of category 1 trackable waste in any load
transport of category 2 trackable waste (other than tyres)	involves the transport of more than 200 kilograms of category 2 trackable waste in any load
transport of category 2 trackable waste comprising tyres	involves the transport of more than 2 tonnes of tyres in any load

[13] Schedule 1, clause 49

Insert in alphabetical order:

category 1 trackable waste means waste of a type described in Part 1 of Schedule 1 to the *Protection of the Environment Operations (Waste) Regulation 2005* that exhibits any of the characteristics specified in Part 3 of that Schedule.

category 2 trackable waste means waste of a type described in Part 2 of Schedule 1 to the *Protection of the Environment Operations (Waste) Regulation 2005* that exhibits any of the characteristics specified in Part 3 of that Schedule.

[14] Schedule 1, clause 50, definition of “friable asbestos waste”

Omit the definition.

2009 No 210

Protection of the Environment Operations Amendment (Miscellaneous)
Regulation 2009

Schedule 2

Amendment of Protection of the Environment Operations (General)
Regulation 1998

**Schedule 2 Amendment of Protection of the
Environment Operations (General)
Regulation 1998**

Clause 6 Fee units

Omit the matter relating to “1 July 2007 or subsequently” from the first, second and third columns of the Table to clause 6 (2).

Insert instead:

1 July 2007 to 30 June 2008	\$100	\$36.75
1 July 2008 or subsequently	\$100	\$38.61

Protection of the Environment Operations Amendment (Miscellaneous)
Regulation 2009

2009 No 210

Amendment of Protection of the Environment Operations (Underground
Petroleum Storage Systems) Regulation 2008

Schedule 3

**Schedule 3 Amendment of Protection of the
Environment Operations (Underground
Petroleum Storage Systems) Regulation
2008**

[1] Clause 28 Exemptions

Omit clause 28 (4) (b). Insert instead:

- (b) may be published in the Gazette or may instead be served
on a person specified in the order, and

[2] Clause 28 (4) (c)

Insert “publication in the Gazette or” after “on and from”.

[3] Schedule 1 Amendment of other Regulations

Omit the Schedule.

2009 No 210

Protection of the Environment Operations Amendment (Miscellaneous)
Regulation 2009

Schedule 4

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

**Schedule 4 Amendment of Protection of the
Environment Operations (Waste)
Regulation 2005**

[1] Clause 43 Special requirements relating to clinical and related waste

Insert after clause 43 (3):

- (4) It is a condition of a licence that authorises the transportation of clinical and related waste that the following requirements are complied with:
 - (a) during transportation, the waste must be placed in rigid containers that are leak proof, shatter proof and washable and have securely fitting lids to prevent spills,
 - (b) during transportation, the waste must be packaged and labelled in accordance with the requirements set out in the document called *Waste Management Guidelines for Health Care Facilities* issued by the Department of Health, as in force from time to time,
 - (c) the waste must not be transported in a vehicle having a waste compaction system,
 - (d) a spill kit must be carried in any vehicle transporting the waste that conforms with the requirements set out in the document called *Waste Management Guidelines for Health Care Facilities* issued by the Department of Health, as in force from time to time,
 - (e) when the waste is in the vehicle and the vehicle is unattended, the vehicle must be securely locked and (except where the vehicle is a railway vehicle) parked in a secure, undercover area.

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

Insert before clause 49 (a):

- (a1) the transportation of waste must be carried out in a manner that avoids the spillage of the waste,

[3] Clause 49 (a)

Insert "or plant" after "vehicle".

[4] Clause 49 (f)–(h)

Insert after clause 49 (e):

- (f) liquid waste must not be mixed with other waste,

- (g) the waste must be able to be sampled by the release of suitable and accessible valves located on the top and, where appropriate, bottom of any container used to transport the waste,
- (h) the following must be carried in the vehicle transporting the waste:
 - (i) a copy of any environment protection licence required to authorise the transport of the waste,
 - (ii) HB 76—2004: *Dangerous Goods—Initial Emergency Response Guide*, published by Standards Australia (*the Standards Australia Guide*) or a document setting out procedures to be followed in an emergency and containing all information from the Standards Australia Guide that relates to the type of waste being transported,
 - (iii) a spill kit that is appropriate for the type of waste being transported.

[5] Clause 49A

Insert after clause 49:

49A Condition of licence for trackable waste

It is a condition of a licence that authorises the transport of trackable waste that clause 49 (f) is complied with.

[6] Clause 51B

Insert after clause 51A:

51B Exemptions relating to transportation of waste

The EPA may from time to time grant an exemption under clause 51 to a person or a class of persons from the requirements of:

- (a) clause 43 (4), or
- (b) clauses 49 (f) and 49A.