



New South Wales

# Protection of the Environment Operations (Waste) Amendment 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*.

FRANK SARTOR, MP  
Minister for Climate Change and the Environment

## Explanatory note

The object of this Regulation is:

- (a) to amend Schedule 1 to the *Protection of the Environment Operations Act 1997* (**the Act**) with respect to the scheduled activities of non-thermal treatment of liquid waste and non-thermal treatment of waste oil and the definition of **building or demolition waste**, and
- (b) to amend the *Protection of the Environment Operations (Waste) Regulation 2005* with respect to the definition of **scheduled waste facility**, certain deductions from waste contributions payable under section 88 of the Act and record-keeping requirements for certain waste.

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

**2009 No 593**

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

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

under the

Protection of the Environment Operations Act 1997

**1 Name of Regulation**

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

**2 Commencement**

This Regulation commences on the day on which it is published on the  
NSW legislation website.

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

**[1] Schedule 1 Scheduled activities**

Omit “liquid waste,” from the definition of *non-thermal treatment of hazardous and other waste* in clause 41 (1).

**[2] Schedule 1, clause 41 (1)**

Insert in alphabetical order:

*non-thermal treatment of liquid waste*, meaning the receiving of liquid waste (other than waste oil), whether from on site or off site, and its processing otherwise than by thermal treatment.

*non-thermal treatment of waste oil*, meaning the receiving of waste oil from off site and its processing otherwise than by thermal treatment.

**[3] Schedule 1, clause 41 (2A)**

Insert after clause 41 (2):

(2A) The activity of non-thermal treatment of liquid waste is declared to be a scheduled activity if it meets the criteria for that activity set out in Column 2 of the Table to this clause.

**[4] Schedule 1, clause 41 (3)**

Insert “other” after “Each”.

**[5] Schedule 1, clause 41, Table**

Insert in alphabetical order of activities in Columns 1 and 2, respectively:

non-thermal treatment of liquid waste	involves having on site at any time more than 200 kilograms of liquid waste (other than clinical and related waste) involves having on site at any time any quantity of liquid waste that is clinical and related waste
non-thermal treatment of waste oil	involves having on site at any time more than 2,000 litres of waste oil involves processing more than 20 tonnes of waste oil per year

**2009 No 593**

Protection of the Environment Operations (Waste) Amendment Regulation  
2009

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

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**[6] Schedule 1, clause 50 (1)**

Omit paragraphs (c) and (d) of the definition of *building and demolition waste*.

Insert instead:

- (c) bricks, concrete, paper, plastics, glass and metal, and
- (d) timber, including unsegregated timber, that may contain timber treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP),

but does not include excavated soil (for example, soil excavated to level off a site prior to construction or to enable foundations to be laid or infrastructure to be constructed).

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## Schedule 2      Amendment of Protection of the Environment Operations (Waste) Regulation 2005

### [1]    **Clause 4 Definitions**

Omit “by reason only that” from the definition of *scheduled waste facility* in clause 4 (1).

Insert instead “because”.

### [2]    **Clause 11 Approval of operational purpose or land application purpose**

Insert after clause 11 (5):

- (6) This clause applies in relation to a land application purpose in the same way as it applies in relation to an operational purpose, and so applies as if a reference in this clause (other than this subclause) to an operational purpose were a reference to a land application purpose.

### [3]    **Clause 11A Deductions from contributions**

Omit clause 11A (1) (c). Insert instead:

- (c) an amount in respect of waste (other than trackable liquid waste) referred to in clause 3A received by the occupier that has been or is to be used for an approved land application purpose by the occupier (*approved land application purpose deduction*).

### [4]    **Clause 11A (3AAA)**

Insert after clause 11A (3):

- (3AAA) Subclause (3) does not operate in respect of any type of waste specified in the guidelines (if any) published or approved by the EPA from time to time for the purposes of this subclause.

### [5]    **Clause 11A (3A)**

Omit the subclause. Insert instead:

#### (3A)    **Approved land application purpose deductions**

For the purposes of subclause (1) (c), waste has been or is to be used for an approved land application purpose at a waste facility if:

- (a) a certificate has been issued under clause 11 in respect of the land application purpose, and

**2009 No 593**

Protection of the Environment Operations (Waste) Amendment Regulation 2009

Schedule 2

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

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- (b) the waste has been or is to be used in accordance with the requirements (if any) specified in the certificate pursuant to clause 11 (5), and
- (c) the waste falls within any of the following subparagraphs:
  - (i) it is new asphalt or concrete, obtained from a batching plant that is used at the facility for roads or other construction works,
  - (ii) it is any one or more of the following substances that is used at the facility for leachate collection systems associated with leachate management in accordance with the conditions of an environment protection licence:
    - (A) geonets,
    - (B) geotextiles,
    - (C) drainage layer media (having a thickness not greater than 300 mm) placed over landfill base liners,
    - (D) piping,
    - (E) electrical equipment,
    - (F) any other machinery,
  - (iii) it is any one or more of the following substances that is used at the facility for landfill lining systems (including landfill cell bases and sides) or associated stormwater management systems in accordance with the conditions of an environment protection licence:
    - (A) geomembranes,
    - (B) geotextiles,
    - (C) clay liners (having a thickness not greater than 900 mm),
    - (D) piping,
  - (iv) it is any one or more of the following substances that is used at the facility for landfill gas collection systems associated with landfill gas management in accordance with the conditions of an environment protection licence:
    - (A) drainage gravels (not exceeding the minimum amount required in any applicable licence),
    - (B) piping,

- (C) electrical equipment,
- (D) any other machinery,
- (v) it is plastic sheeting that is used at the facility as a daily cover for waste.

**[6] Clause 11A (5A)**

Insert after clause 11A (5):

- (5A) An approved land application 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 (if any) specified in the certificate pursuant to clause 11 (5).

**[7] Clause 12 Records to be kept by waste facilities**

Omit clause 12 (2). Insert instead:

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

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

- (a) the nature of the operational purpose or land application 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 or a land application purpose.

**[8] Clause 12 (9)**

Insert after clause 12 (8) (following the penalty provision):

**(9) Exemptions relating to record keeping requirements**

The EPA may from time to time grant an exemption under clause 51 from the requirements of this clause to an occupier of a scheduled waste facility to whom the requirement to pay a contribution to the EPA under section 88 of the Act does not apply.