



New South Wales

# Protection of the Environment Operations (Waste) Amendment (Contributions) Regulation 2014

under the

Protection of the Environment Operations Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

ROBERT STOKES, MP  
Minister for the Environment

## Explanatory note

The object of this Regulation is to make amendments to the *Protection of the Environment Operations (Waste) Regulation 2014* related to the commencement of Schedule 1 [1] to the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013* on 1 August 2015. Schedule 1 [1] to that Act removes the exemption under section 88 of the *Protection of the Environment Operations Act 1997* (*the Principal Act*) from payment of the waste contribution by licensees of waste facilities used for re-using, recovering, recycling or processing of waste other than liquid waste. In particular, this Regulation deals with the following matters related to the removal of that exemption (*the section 88 exemption*):

- (a) the times by which waste contributions are to be paid by occupiers of licensed waste facilities that receive waste,
- (b) exemptions for occupiers of certain kinds of licensed waste facilities from the requirement to pay waste contributions,
- (c) the times within which occupiers of licensed waste facilities who are required to pay waste contributions must provide the Environment Protection Authority (the *EPA*) with monthly reports in relation to the quantity and types of waste received at those facilities,
- (d) the carrying out of periodic volumetric surveys at licensed waste facilities whose occupiers are required to pay waste contributions,
- (e) consequential amendments,
- (f) savings and transitional arrangements.

This Regulation also amends the *Protection of the Environment (General) Regulation 2009* to prescribe penalty notice offences relating to (among other things) transitional requirements for occupiers of licensed waste facilities, required to pay waste contributions because of the removal of the section 88 exemption, to provide baseline information to the EPA about those facilities.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 88 (2), (3) and (5), 222, 226, 227 (1) and (3) and 323 (the general regulation-making power) and Schedule 2.

## **Protection of the Environment Operations (Waste) Amendment (Contributions) Regulation 2014**

under the

Protection of the Environment Operations Act 1997

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Contributions) Regulation 2014*.

### **2 Commencement**

This Regulation commences on 1 August 2015 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Protection of the Environment Operations (Waste) Regulation 2014**

### **[1]    Clause 3 Interpretation**

Insert in alphabetical order in clause 3 (1):

*scheduled waste disposal facility* means a waste facility that is required to be licensed under the Act because it is used for the disposal of waste.

### **[2]    Clause 10 When contributions are to be paid for trackable liquid waste**

Omit clause 10 (1) and (3).

### **[3]    Clauses 10A and 10B**

Insert after clause 10:

#### **10A    When contributions are to be paid by disposal facilities (except for trackable liquid waste)**

For the purposes of section 88 (3) (b) of the Act, the following periods are prescribed as the times within which a contribution payable by an occupier of a scheduled waste disposal facility is to be paid in respect of waste (other than trackable liquid waste) received at the facility:

- (a) in the case of waste consisting of coal washery rejects (if the facility is a scheduled coal waste facility)—the period of 26 days after the end of the month in which the waste is received at the facility,
- (b) in any other case—the period of 56 days after the end of the month in which the waste is received at the facility.

#### **10B    When contributions are to be paid by waste facilities that are not disposal facilities (except for trackable liquid waste)**

- (1) For the purposes of section 88 (3) (b) of the Act, the periods specified in this clause (*prescribed periods*) are prescribed as the times within which a contribution payable by an occupier of a waste facility that is not a scheduled waste disposal facility is to be paid in respect of waste (other than trackable liquid waste) received at the facility.
- (2) The prescribed period is 12 months after the end of the month in which the waste is received at the facility (except as otherwise provided by this clause).
- (3) The prescribed period is 56 days after the end of the month in which the waste is transported from the facility if, before the end of the 12 month period after the end of the month in which it was received:
  - (a) the waste is transported from the facility, or
  - (b) the waste has been processed at the facility to any standards required by a resource recovery order applying, at the time that the processing is completed, to the occupier of the facility in relation to the supply of the waste.
- (4) Despite subclauses (2) and (3), the prescribed period is 56 days after the end of the month in which the waste is received if, at the end of that month:
  - (a) the amount of waste at the facility (other than trackable liquid waste and waste generated at the facility, but including waste generated at the facility from waste received at the facility) exceeds the authorised amount, and

(b) the waste forms part of the amount by which the authorised amount is exceeded.

(5) In this clause:

*authorised amount*, in relation to a waste facility, means the maximum amount of waste that may be stored at the facility at any one time under the terms of the environment protection licence for the facility.

*resource recovery order* means an order made under Part 9.

**[4] Clause 18 Provisions applicable in relation to all deductions**

Insert “and the facility is a scheduled waste disposal facility” after “deduction” in clause 18 (1) (c).

**[5] Clause 20 Exemption of certain other occupiers from requirement to pay contributions**

Insert after the heading to the clause:

**Note.** See clause 109 in relation to reporting requirements for occupiers of facilities who are not required to pay contributions because of an exemption under this clause.

**[6] Clause 20 (2)–(6)**

Omit clause 20 (2). Insert instead:

- (2) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if:
  - (a) the facility is a scheduled waste facility because a prescribed scheduled activity is carried on at the facility, and
  - (b) no other activity in respect of waste received at the facility is carried on at the facility that would make the facility a scheduled waste facility (other than the storage of waste received in connection with the prescribed scheduled activity).
- (3) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if:
  - (a) the facility is not a scheduled waste disposal facility, and
  - (b) the facility is a scheduled waste facility because an activity listed in clause 26 (Metallurgical activities) of Schedule 1 to the Act is carried on at the facility.
- (4) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if:
  - (a) the facility is a scheduled waste facility only in respect of the storage, treatment, processing or sorting of clinical and related waste, hazardous waste, liquid waste or restricted solid waste (or any combination of those kinds of waste), or
  - (b) the facility is a scheduled waste facility only in respect of the disposal of slags or virgin excavated natural material (or both of those kinds of waste).
- (5) Nothing in this clause exempts the occupier of a scheduled waste facility from the requirement to pay contributions to the EPA in respect of trackable liquid waste received at the facility.

(6) In this clause:

*prescribed scheduled activity* means a scheduled activity listed in any of the following provisions of Schedule 1 to the Act:

- (a) clause 7 (Ceramic works),
- (b) clause 12 (Composting),
- (c) clause 14 (Container reconditioning),
- (d) clause 15 (Contaminated soil treatment),
- (e) clause 30 (Paper or pulp production).

**[7] Clause 21 Certain types of waste exempted from calculation of contributions**

Insert “disposal” after “scheduled waste” in clause 21 (1).

**[8] Clause 22 Waste contribution monthly reports**

Omit clause 22 (5). Insert instead:

(5) In this clause, the *prescribed number of days* is:

- (a) in the case of a scheduled coal waste facility—26 days, or
- (b) in the case of any other scheduled waste disposal facility—56 days, or
- (c) in any other case—14 days.

**[9] Clause 23 Periodic volumetric surveys of scheduled waste facilities**

Omit clause 23 (1). Insert instead:

(1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must:

- (a) in the case of a scheduled waste disposal facility that is a landfill site:
  - (i) cause a volumetric survey of the facility to be carried out by a qualified surveyor during June and December in each year, and
  - (ii) provide the results to the EPA (in any form and manner specified by the Waste Levy Guidelines) by no later than the following 31 July and 31 January, respectively, and
- (b) in any other case:
  - (i) cause a volumetric survey of waste at the facility to be carried out by a qualified surveyor during June in each year, and
  - (ii) provide the results to the EPA (in the form and manner specified by the Waste Levy Guidelines) by no later than the following 31 July.

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

**[10] Clause 23 (2) (a) and (4)**

Omit “landfill site” wherever occurring. Insert instead “waste facility”.

**[11] Clause 24A**

Insert after clause 24:

**24A Surveys to be carried out in accordance with Waste Levy Guidelines**

An occupier of a waste facility who is required to cause a volumetric survey or a topographical survey to be carried out under this Division must ensure that

the survey is carried out in accordance with any requirements specified in the Waste Levy Guidelines.

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

**[12] Clause 109 Reporting requirements for non-paying waste facilities, and for landfill sites outside regulated area**

Omit clause 109 (1). Insert instead:

- (1) This clause applies to any of the following:
  - (a) any occupier of a scheduled waste facility who is not required to pay contributions under section 88 of the Act because of an exemption under Division 5 of Part 2,
  - (b) any occupier of a waste facility that is a landfill site who is not required to pay contributions under section 88 of the Act because an environment protection licence is not required for the facility,
  - (c) any occupier of a waste facility that is a landfill site located outside the regulated area.

**[13] Clause 109 (3) and (4)**

Omit “landfill site” wherever occurring. Insert instead “waste facility”.

**[14] Schedule 1A**

Insert after Schedule 1:

## **Schedule 1A Savings and transitional provisions**

### **Part 1 Provisions consequent on commencement of Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013**

#### **1 Definition of “new contributor”**

In this Part:

*new contributor* means the occupier of a scheduled waste facility who:

- (a) immediately before 1 August 2015:
  - (i) was not required to pay contributions under section 88 of the Act because the EPA had determined that the facility was used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste, or
  - (ii) was exempt under clause 20 (2) (a) of this Regulation (as in force immediately before that day) from the requirement to pay a contribution under section 88 of the Act in respect of waste received at the facility, and
- (b) is required to pay a contribution to the EPA under section 88 of the Act in respect of waste received on or after that day because of the amendment to:
  - (i) section 88 of the Act by the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013*, or

- (ii) clause 20 of this Regulation by the *Protection of the Environment Operations (Waste) Amendment (Contributions) Regulation 2014*.

## 2 Deductions

For the avoidance of doubt, an occupier of a scheduled waste facility who is a new contributor cannot make a deduction under Division 4 of Part 2 of this Regulation in respect of waste received at the facility before 1 August 2015.

## 3 Weighbridges

- (1) Clause 36 of this Regulation does not apply in relation to the occupier of a scheduled waste facility who is a new contributor.
- (2) This clause ceases to have effect on 31 January 2016.

## 4 Baseline estimates and surveys for new contributors

### (1) Estimate of waste existing immediately before 1 August 2015

An occupier of a waste facility who is a new contributor must, by no later than 31 August 2015, provide the EPA with the following information:

- (a) an estimate of the amount of waste at the facility immediately before 1 August 2015 (calculated using an approved method),
  - (b) the waste type of that waste (determined in accordance with the Waste Levy Guidelines).
- (2) The information must be provided to the EPA in the approved form and manner.
  - (3) **Baseline topographical survey for comparison with first volumetric survey**  
An occupier of a waste facility who is a new contributor must:
    - (a) cause a topographical survey of the facility to be carried out by a qualified surveyor (using an approved method) during August 2015, and
    - (b) provide the results to the EPA, in the approved form and manner, by no later than 30 September 2015.
  - (4) In this clause:  
*qualified surveyor* has the same meaning as in Part 2 of this Regulation.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## **Schedule 2      Amendment of the Protection of the Environment Operations (General) Regulation 2009**

### **Schedule 6 Penalty notice offences**

Insert in appropriate order in the matter relating to the *Protection of the Environment Operations (Waste) Regulation 2014*:

Clause 24A	3	\$750	\$1,500
Clause 4 (1) of Schedule 1A	3	\$750	\$1,500
Clause 4 (2) of Schedule 1A	3	\$750	\$1,500
Clause 4 (3) of Schedule 1A	3	\$750	\$1,500