



New South Wales

Protection of the Environment Operations (Waste) Amendment Regulation 2017

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*.

GABRIELLE UPTON, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to amend the *Protection of the Environment Operations (Waste) Regulation 2014* for the following purposes:

- (a) to ensure consistency across the industry on reporting and the due date of payments,
- (b) to enable the Environment Protection Authority (*EPA*) to specify types of roads or other construction works and types of waste for an operational purpose deduction,
- (c) to provide the EPA with the power to exempt community recycling centres from the requirement to pay the waste levy,
- (d) to provide that the method to measure and record waste at facilities whose occupiers are not required to pay waste contributions is a method approved by the EPA or as set out in the Waste Levy Guidelines,
- (e) to remove the requirement to provide notice to the holder of an approval or consignment authorisation prior to revoking an approval or consignment authorisation,
- (f) to require waste transporters to cover waste during transport and impart liability on the registered owner of the motor vehicle or trailer in certain circumstances,
- (g) to prescribe additional requirements for the defence under section 142E of the *Protection of the Environment Operations Act 1997 (the Act)*.

This Regulation also amends:

- (a) the Act to exclude the blending, mixing, packaging and storage of certain landscaping material and virgin excavated natural material from the scheduled activities of resource recovery, waste processing and waste storage, and
- (b) the *Protection of the Environment Operations (General) Regulation 2009* to prescribe an offence relating to avoiding the escape of waste during transportation as a penalty notice offence.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 5 (3), 88, 142E, 222, 226, 227, 286 and 323 (the general regulation-making power) and Schedule 2.

Protection of the Environment Operations (Waste) Amendment Regulation 2017

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 2017*.

2 Commencement

- (1) This Regulation (except as provided by subclause (2)) commences on the day on which it is published on the NSW legislation website.
- (2) Schedule 3 [1]–[3], [7] and [8] commence on the first day of the month following the month in which this Regulation is published on the NSW legislation website.

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

[1] Schedule 1 Scheduled activities

Insert after clause 34 (2):

- (2A) This clause also does not apply to the receiving of waste at premises from off site and its processing if:
- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the waste at the premises other than blending, mixing, packaging or storage of the waste for the purpose of that sale or supply, and
 - (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
 - (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
 - (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.

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

Insert after clause 41 (2):

- (2AA) This clause also does not apply to the receiving of waste at premises from off site and its processing if:
- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the waste at the premises other than blending, mixing, packaging or storage of the waste for the purpose of that sale or supply, and
 - (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
 - (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
 - (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.

[3] Schedule 1, clause 42 (2A)

Insert after clause 42 (2):

- (2A) This clause also does not apply to the receiving of waste from off site and its storage if:
- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the waste at the premises other than storage of the waste for the purpose of that sale or supply, and

- (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
 - (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
 - (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.
- (2B) This clause also does not apply to the receiving of virgin excavated natural material from off site and its storage if the only waste received is virgin excavated natural material.

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

Schedule 6 Penalty notice offences

Insert in appropriate order in Columns 1, 2, 3 and 4, respectively, under the heading
Protection of the Environment Operations (Waste) Regulation 2014:

Clause 70 (3)	1, 2	\$750	\$1,500
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Schedule 3 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

[1] Clause 10A

Omit the clause. Insert instead:

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 occupier of a scheduled waste disposal facility must pay the contribution payable in respect of the waste (other than trackable liquid waste) received at the facility no later than 26 days after the end of the month in which the report in relation to that waste must be provided to the EPA in accordance with clause 22.

[2] Clause 10B When contributions are to be paid by waste facilities that are not disposal facilities (except for trackable liquid waste)

Omit “56 days after the end of” wherever occurring in clause 10B (3) and (4).

Insert instead “26 days after the end of the month following”.

[3] Clause 10B (4)

Omit “that month”. Insert instead “the month in which the waste is received”.

[4] Clause 15 Approval of operational purpose

Omit “Roads (or other construction works of a kind specified in the Waste Levy Guidelines)” from item 2 of the table to clause 15 (1).

Insert instead “Roads of a kind specified in the Waste Levy Guidelines or other construction works of a kind specified in the Waste Levy Guidelines”.

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

Insert after clause 21 (1):

- (1A) Any waste received at a Community Recycling Centre is exempted from the calculation of the contribution payable under section 88 of the Act.

[6] Clause 21 (3)

Insert after clause 21 (2):

- (3) For the purposes of this clause, *Community Recycling Centre* means a centre that is nominated as such by the EPA in the Gazette and is part of a scheduled waste facility (but not a scheduled waste disposal facility).

[7] Clause 22 Waste contribution monthly reports

Omit “the prescribed number of days” from clause 22 (2). Insert instead “26 days”.

[8] Clause 22 (5)

Omit the subclause.

[9] Clause 37 Measuring and recording of waste at facilities whose occupiers are not required to pay waste contributions

Insert “or by the EPA” after “in the Waste Levy Guidelines”.

[10] Clause 49 Approval of transporters or receivers as authorised agents

Omit clause 49 (4). Insert instead:

- (4) A revocation of an approval is effected by notice in writing given to the relevant transporter or receiver of waste.

[11] Clause 50 Issue of consignment authorisations

Omit clause 50 (7). Insert instead:

- (7) A revocation of a consignment authorisation is effected by notice in writing given to the relevant consignor of waste.

[12] Clause 51 Approval of receivers of waste to issue consignment authorisations

Omit clause 51 (4). Insert instead:

- (4) A revocation of an approval is effected by notice in writing given to the relevant receiver of waste.

[13] Clause 70

Omit the clause. Insert instead:

70 Avoiding escape of waste during transportation (cf clause 49 (a1)–(c) of 2005 Reg)

Note. Under section 116 of the Act, it is an offence to wilfully or negligently cause any substance to leak, spill or otherwise escape in a manner that harms, or is likely to harm, the environment.

- (1) A person who transports waste must ensure that the waste is transported in a manner that avoids the waste spilling, leaking or otherwise escaping from any motor vehicle or trailer used to transport the waste.

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

- (2) A person who transports waste must ensure that the waste is covered during its transportation unless the waste consists solely of waste tyres or scrap metal.

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

- (3) A person who transports waste in the course of business must take all reasonable steps to ensure that any motor vehicle or trailer used to transport the waste is constructed and maintained so as to avoid the waste spilling, leaking or otherwise escaping from the motor vehicle or trailer.

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

- (4) In this clause:

a person who transports waste includes the transporter of waste, the owner of any motor vehicle used to transport waste and the owner of any trailer used to transport waste.

- (5) **Only one person liable**

If a penalty has been imposed or recovered from any person in relation to an offence under subclause (1), (2) or (3) (whether the actual transporter or the owner of the motor vehicle or trailer), no further penalty may be imposed on or recovered from any other person in relation to that offence. In this subclause, ***penalty*** includes a penalty under a penalty notice.

(6) Exception for stolen motor vehicles

Subclauses (1)–(3) do not apply to the owner of the motor vehicle if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.

(7) Exception for stolen trailers

Subclauses (1)–(3) do not apply to the owner of a trailer if the trailer was at the time a stolen trailer or a trailer illegally taken or used.

(8) Exception for owner when not driver

Subclauses (1)–(3) do not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and:

- (a) gives notice in accordance with subclause (9) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or
- (b) satisfied the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

A notice under this subclause is, in proceedings against the person named in the notice for an offence under this clause, evidence that the person was driving the motor vehicle at the relevant time.

(9) Notice given by owner or driver

Section 146 (7)–(9) of the Act apply to a notice for the purposes of subclause (8) in the same way as they apply to a notice for the purposes of section 146 (5) of the Act.

[14] Clause 111 Defence to offence of polluting land at unlicensed landfill site

Omit “is available” from clause 111 (1). Insert instead “is only available”.

[15] Clause 111 (1) (a)

Omit “(if required to be notified under clause 110)”.

[16] Clause 111 (1)

Insert at the end of the subclause:

, and

- (d) the landfill site was located outside the regulated area, and
- (e) the landfill site was owned and operated by or on behalf of a local council, and
- (f) the landfill site was in existence immediately before 28 April 2008.