



New South Wales

Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2022

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*.

JAMES GRIFFIN, MP
Minister for Environment and Heritage

Explanatory note

The object of this Regulation is to amend the *Protection of the Environment Operations (General) Regulation 2021* to—

- (a) impose a prohibition on—
 - (i) the thermal treatment of waste that involves or results in energy recovery, and
 - (ii) work carried out to enable the activity to be carried out, and
- (b) provide for exceptions to the prohibition, including if—
 - (i) the activity or work is carried out at certain precincts or premises, or
 - (ii) the activity is an established and operating activity at the premises immediately before the prohibition comes into force, or
 - (iii) the activity is carried out to replace a less environmentally sound fuel in certain circumstances.

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Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2022*.

2 Commencement

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

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 2021

[1] Clause 113A

Insert after clause 113—

113A Energy recovery from thermal treatment of waste

For the Act, section 6(3), the EPA is declared to be the appropriate regulatory authority for a matter arising under Part 3A.

[2] Chapter 8, Part 3A

Insert after Part 3—

Part 3A Energy recovery from thermal treatment of waste

128A Definitions

(1) In this Part—

Activation Precinct has the same meaning as in *State Environmental Planning Policy (Precincts—Regional) 2021*.

commencement day means the day on which this Part commences.

energy recovery means the recovery of energy or potential energy as one or more of the following—

- (a) electrical energy,
- (b) mechanical energy,
- (c) heat,
- (d) a fuel.

former mine premises means premises—

- (a) at which mining operations, within the meaning of the *Mining Act 1992*, were carried out under an authority granted under the *Mining Act 1992*, and
- (b) that are no longer used or authorised for the activity, excluding a derelict mine site within the meaning of the *Mining Act 1992*.

former thermal electricity generation premises means premises—

- (a) at which the scheduled activity of general electricity works involving thermal processes was carried out under a licence issued under the Act, and
- (b) that are no longer used or licensed for the activity.

general electricity works has the same meaning as in the Act, Schedule 1, clause 17.

less environmentally sound fuel means coal, coal-derived solid fuel or petroleum-based liquid fuel, but does not include liquefied petroleum gas, natural gas and liquefied natural gas.

Parkes Activation Precinct means the Activation Precinct declared by *State Environmental Planning Policy (Precincts—Regional) 2021*, Schedule 1, section 1.

thermal treatment has the same meaning as in the Act, Schedule 1, clause 50(1), but does not include the following—

- (a) the incineration of waste for destruction or disposal,

- (b) autoclaving processes,
- (c) biological processes, including anaerobic digestion and composting,
- (d) thermal processes that do not involve a change in the chemical composition of the waste,
- (e) the thermal treatment of biosolids, contaminated soil or scrap metal,
- (f) the thermal treatment of waste plastic to produce plastic products, or inputs for plastic products, if at least 65% of the weight of the waste plastic thermally treated in a 12-month period is converted into plastic products or inputs for plastic products,
- (g) the use of waste-derived fuel by a vehicle.

vehicle includes the following—

- (a) an aircraft,
- (b) a vehicle within the meaning of the *Road Transport Act 2013*,
- (c) a vessel within the meaning of the *Marine Safety Act 1998*,
- (d) a train within the meaning of the *Rail Safety National Law (NSW)*, but including a vehicle not operating on a railway that is designed to operate both on and off a railway.

waste has the same meaning as in the Act, but does not include a fuel—

- (a) defined in Part 1 of the document entitled *Eligible Waste Fuels Guidelines* published in the Gazette from time to time by the EPA, and
- (b) listed in Section 3 of the document entitled *NSW Energy from Waste Policy Statement* published in the Gazette from time to time by the EPA.

- (2) A word or expression used in this Part has the same meaning as in the Act, Schedule 1, clause 50, unless otherwise defined in this Part.

128B Prohibition on energy recovery from thermal treatment of waste

- (1) A person must not carry out, or cause or allow to be carried out, the thermal treatment of waste if—
 - (a) it involves or results in energy recovery from the waste, and
 - (b) one or more of the activities carried out at the premises are scheduled activities that require a licence.
- (2) A person must not carry out, or cause or allow to be carried out, work at a premises that purports to enable the activity prohibited by subclause (1) to be carried out at the premises.
- (3) An offence under this clause is a strict liability offence.
Maximum penalty—
 - (a) for a corporation—400 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
 - (b) for an individual—200 penalty units and, for a continuing offence, a further 200 penalty units for each day the offence continues.

128C Exceptions to prohibition on energy recovery from thermal treatment of waste

- (1) A person is not guilty of an offence under clause 128B if the activity or work prohibited by the clause is carried out at—
 - (a) the Parkes Activation Precinct, or
 - (b) one of the following nominated precincts, identified on a map published in the Gazette by the EPA—

- (i) the Richmond Valley Regional Jobs Precinct,
 - (ii) the Southern Goulburn Mulwaree Precinct,
 - (iii) the West Lithgow Precinct, or
 - (c) one of the following nominated precincts or premises, identified on a map or specified in a notice published in the Gazette by the EPA—
 - (i) an Activation Precinct,
 - (ii) a Regional Jobs Precinct,
 - (iii) former mine premises,
 - (iv) former thermal electricity generation premises.
- (2) The EPA may, by notice published in the Gazette, vary or revoke a nomination referred to in subclause (1)(b) or (c).
- (3) A person is not guilty of an offence under clause 128B if the activity prohibited by the clause is—
 - (a) lawfully able to be, and first, carried out before the commencement day, and
 - (b) an established and operating activity at the premises immediately before the commencement day.
- (4) A person is not guilty of an offence under clause 128B if—
 - (a) the activity prohibited by the clause is carried out to replace the use of a less environmentally sound fuel, and
 - (b) the fuel was, or was lawfully able to be, thermally treated at the premises immediately before the commencement day, and
 - (c) for fuel thermally treated at the premises in the 12-month period ending immediately before the commencement day—at least 90% of the energy recovered from thermally treating the fuel, including energy generated from the energy, was used in, or to power, industrial or manufacturing processes at the premises during the period, and
 - (d) at least 90% of the energy recovered from thermally treating the waste, including energy generated from the energy, is used in, or to power, industrial or manufacturing processes at the premises in a 12-month period.

128D Effect of prohibition on environment protection licences

The EPA must refuse an application for the issue, transfer or variation of a licence if granting the application would purport to authorise an activity or work prohibited by this Part.

Note— A licence cannot be refused if it is necessary for carrying out State significant development authorised by a development consent or approved State significant infrastructure—see the *Environmental Planning and Assessment Act 1979*, sections 4.42 and 5.24.

[3] Schedule 6 Penalty notice offences

Insert after the matter relating to the *Protection of the Environment Operations (General) Regulation 2021*, clause 128(1)(b) in the table to the Schedule—

Clause 128B(1)	3	\$5,500	\$11,000
Clause 128B(2)	3	\$5,500	\$11,000