



New South Wales

Protection of the Environment Operations (Waste) Amendment (Waste Contributions) Regulation 2023

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 (Waste) Regulation 2014* to make further provision about the following matters—

- (a) calculation of the amount of waste at a waste facility for the purpose of determining when the occupier of the facility must pay the EPA a contribution for waste received at the facility (a **waste contribution**),
- (b) requiring the occupier to have an audit of information conducted in connection with a waste contribution,
- (c) exemptions, and operational purpose deductions, from a waste contribution,
- (d) estimation by the EPA of the amount of waste at, or waste received at, a waste facility in connection with a waste contribution,
- (e) the definition of **scheduled waste disposal facility**, and consequently the application of provisions that use the term.

This Regulation in part addresses the outcome of *Weston Aluminium Pty Ltd v Environment Protection Authority* [2022] NSWCA 236.

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Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Waste Contributions) Regulation 2023*.

2 Commencement

This Regulation commences as follows—

- (a) for Schedule 1[3]–[8]—on 1 June 2023,
- (b) otherwise—on the day on which it is published on the NSW legislation website.

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

[1] Clause 3 Interpretation

Omit clause 3(1), definition of *scheduled waste disposal facility*.

Insert in alphabetical order—

scheduled activity of waste disposal means an activity listed in—

- (a) the Act, Schedule 1, clause 39, or
- (b) the Act, Schedule 1, clause 40.

scheduled waste disposal facility means a waste facility that is required to be licensed under the Act because a scheduled activity of waste disposal is carried on at the facility.

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

Insert after clause 10B(1)—

- (1A) For subclause (1)(b)(i), the amount of waste at the facility is the greater of the following—
 - (a) the amount determined by reference to information reported to the EPA under clause 22,
 - (b) the amount estimated by the EPA under clause 25A,
 - (c) the amount determined by a volumetric survey under this Part.

[3] Clause 15 Approval of operational purpose

Omit “(having a thickness not greater than 300 millimetres)” from clause 15(1), table, item 3, “Kind of waste” column, paragraph (c).

[4] Clause 15(1), table, item 4, “Kind of waste” column, paragraph (c)

Omit “(having a thickness not greater than 900 millimetres)”.

[5] Clause 15(1), table, item 4, “Kind of waste” column, paragraphs (e) and (f)

Insert after paragraph (d)—

- (e) compacted sub-bases,
- (f) geosynthetic clay liners.

[6] Clause 15(1), table, item 5, “Kind of waste” column, paragraphs (c)–(g)

Omit paragraphs (c)–(e). Insert instead—

- (c) piping,
- (d) virgin excavated natural material,
- (e) soil binders,
- (f) silt fences,
- (g) garden waste or compost.

[7] Clause 15(1), table, item 5, “Purpose” column

Insert “that are in accordance with the conditions of an environment protection licence” after “Stormwater management systems”.

[8] Clause 15(1), table, item 6, “Kind of waste” column, paragraphs (c) and (d)

Insert after paragraph (b)—

- (c) geotextiles,
- (d) geonet drainage geocomposites.

[9] Clause 16 Transported waste deduction other than for trackable liquid waste

Omit “to ensure” from clause 16(4)(b). Insert instead “ensure”.

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

Omit clause 20(4). Insert instead—

- (4) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under the Act, section 88 if—
 - (a) the facility is not a scheduled waste disposal facility, and
 - (b) the scheduled activity carried on at the facility involves only the storage, treatment, processing or sorting of 1 or more of the following—
 - (i) clinical and related waste,
 - (ii) hazardous waste,
 - (iii) liquid waste,
 - (iv) restricted solid waste.
- (4A) The occupier of a scheduled waste disposal facility is exempt from the requirement to pay contributions to the EPA under the Act, section 88 if the scheduled activity of waste disposal carried on at the facility involves only 1 or both of the following—
 - (a) slags,
 - (b) virgin excavated natural material.

[11] Clause 22 Waste contribution monthly reports

Insert after clause 22(3)—

- (3A) The EPA may, by written notice, require the occupier of a scheduled waste facility to—
 - (a) engage an independent person approved by the EPA to conduct an audit of, and to prepare a report on, the information provided, or required to be provided, under this clause for the period specified in the notice, and
 - (b) ensure a copy of the report is provided to the EPA within the time specified in the notice.
- (3B) The occupier must comply with the notice.
Maximum penalty—
 - (a) for an individual—100 penalty units, or
 - (b) for a corporation—200 penalty units.

[12] Clause 25A, heading

Omit “changes to mass”. Insert instead “amount”.

[13] Clause 25A(1)–(2A)

Omit clause 25A(1) and (2). Insert instead—

- (1) This clause applies if the EPA reasonably believes—
 - (a) the mass of waste may have changed while the waste is at a scheduled waste facility, or
 - (b) the occupier of the facility has incorrectly calculated the mass of waste at the facility, or
 - (c) the records relating to waste received at the facility during a period are inadequate as referred to in clause 13, or

Note— See clause 13(2).

 - (d) information reported to the EPA under clause 22 is incomplete, inaccurate or inconsistent with other records—
 - (i) whether the records are kept by the occupier of the facility or another person or body, and
 - (ii) whether or not the information relates to waste at, or waste received at, the facility.
- (2) The EPA may, for the purposes of this Part, estimate the amount of waste—
 - (a) at a facility at a particular time, or
 - (b) received at a facility at a particular time, or
 - (c) received at a facility during a period.
- (2A) The EPA may, as a result of the estimate, adjust—
 - (a) a report under clause 22, and
 - (b) a contribution liability accordingly.

[14] Schedule 1A Savings and transitional provisions

Insert after Part 3—

Part 4 Provisions consequent on commencement of Protection of the Environment Operations (Waste) Amendment (Waste Contributions) Regulation 2023

7 Application of amendments

- (1) Clause 10B(1A) extends to waste at, or waste received at, a scheduled waste facility before the commencement of the subclause.
- (2) The amendments made to clause 15 by the *Protection of the Environment Operations (Waste) Amendment (Waste Contributions) Regulation 2023* do not apply in relation to waste received at a waste facility before 1 June 2023.
- (3) The EPA may, under clause 22(3A), require an audit of, and a report on, information provided, or required to be provided, under clause 22 before the commencement of the subclause.
- (4) The amendments made to clause 25A by the *Protection of the Environment Operations (Waste) Amendment (Waste Contributions) Regulation 2023* extend to waste at, or waste received at, a scheduled waste facility before the commencement of the amendments.