

Protection of the Environment Operations (Waste) Regulation 2005

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New South Wales

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New South Wales

Contents

Part 1 Preliminary	6
1 Name of Regulation	6
2 Commencement	6
3 Definitions	6
Part 2 Contributions by occupiers of scheduled waste facilities and monitoring requirements	
	6
4 Definitions	7
4A Payment of contributions	7
5 Contributions payable in relation to scheduled waste facilities where adequate records kept	8
6 Contributions payable in relation to scheduled waste facilities where inadequate records kept	10
7 Payment of contributions by holder of supervisory licence	12
8 Interest on unpaid contributions	12
9 Exemption of certain occupiers from requirement to pay contributions	12
10 Certain types of waste exempted from calculation of contributions	12
11 Approval of operational purpose	14
11A Deductions from contributions	15
12 Records to be kept by waste facilities	16
13 Waste contribution monthly reports	18
14 Volumetric surveys	18
15 Weighbridges	19

16 Video monitoring systems	20
Part 3 Waste tracking requirements.....	21
Division 1 Preliminary	21
17 Definitions	21
18 Transportation of waste to which Part applies	22
19 Transportation of waste to which Part does not apply	22
20 Exemptions relating to other types of waste	23
Division 2 Obligations on consignor of waste	23
21 (Repealed)	23
22 Obligations on consignor of waste relating to transportation of waste.....	23
23 Copy of waste transport certificate to be given to occupier of waste facility	24
Division 3 Obligations on transporter of waste	24
24 Obligations on transporters of waste.....	24
Division 4 Obligations on receiver of waste	25
25 Obligations on receiver of waste relating to waste.....	25
26 Receiver of waste may accept or reject waste	27
Division 5 Authorised agents	27
27 Appointment of authorised agent.....	27
28 Approval of authorised agents.....	28
Division 6 Consignment authorisations	28
29 Issue of consignment authorisations	28
30 Approval of receivers of waste to issue consignment authorisations	29
31 Expired or revoked consignment authorisation	29
Division 7 Record keeping and returns	30
32 Record keeping requirements relating to occupiers of waste facilities	30
33 Record keeping requirements relating to consignors of waste	30
34 Record keeping requirements relating to transporters of waste.....	30
35 Record keeping requirements relating to receivers of waste	30
36 Returns by receivers of waste	31

37 Approved record-keeping systems	31
Division 8 Miscellaneous	31
38 Exemption relating to authorised interstate transporters of waste	31
39 Defences	32
40 Offences relating to false information about waste	32
41 Approved forms	32
Part 4 Management of special wastes	33
42 Special requirements relating to asbestos waste	33
43 Special requirements relating to clinical waste	35
Part 5 Prohibition against using certain waste for growing vegetation ..	36
44 Definitions	36
45 Residue waste not to be applied to certain land.....	36
46 Exemptions relating to residue waste.....	37
Part 5A Waste performance improvement scheme.....	37
46A Definitions	37
46B Waste performance improvement guidelines	37
46C Application for waste performance improvement payments.....	38
46D Determination of application.....	38
46E Calculation of amount of waste performance improvement payment.....	38
46F Payment of waste performance improvement payments	39
Part 6 Miscellaneous	39
47 Reporting requirements for non-licensed landfill sites.....	39
48 Requirements relating to storage of waste generally	40
49 Requirements relating to transportation of waste generally.....	40
50 Immobilisation of contaminants in waste	40
51 General provisions relating to exemptions	41
52 Offence of providing false information	43
53 Savings and transitional provisions	43
54 Interim regulatory provisions.....	43
55 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 2004.....	44

Schedule 1 Waste to which waste tracking requirements apply44

**Schedule 2 Amendment of Protection of the Environment Operations
(Penalty Notices) Regulation 2004**

..... 48

Protection of the Environment Operations (Waste) Regulation 2005



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Regulation 2005*.

2 Commencement

- (1) This Regulation commences on 1 September 2005, except as provided by subclause (2).
- (2) The provisions of Parts 2–5, Part 6 (except clause 54) and Schedules 1 and 2 [2] commence on 1 March 2006.

Note 1—

This Regulation replaces the *Protection of the Environment Operations (Waste) Regulation 1996* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

Note 2—

The provisions of the *Protection of the Environment Operations (Waste) Regulation 1996* are prescribed as a regulation until 1 March 2006 by clause 54 of this Regulation.

3 Definitions

- (1) In this Regulation:

approved means approved by the EPA from time to time.

the Act means the *Protection of the Environment Operations Act 1997*.

- (2) Expressions used in this Regulation that are defined in Part 3 (Interpretative provisions) of Schedule 1 to the Act have the same meanings as specified in that Part.
- (3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Contributions by occupiers of scheduled waste facilities and

monitoring requirements

4 Definitions

In this Part:

CPI means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

ERA means extended regulated area.

motor car means:

- (a) a motor vehicle constructed primarily for the carriage of persons, or
- (b) a motor vehicle that is of the kind known as a utility, station wagon or panel van.

operational purpose, in relation to the use of waste, means:

- (a) in the case of any waste—the purpose of the final capping of works, or
- (b) in the case of waste that consists solely of virgin excavated natural material—the purpose of placing the material below the water table to rehabilitate a sand mine,

in accordance with the conditions of an environment protection licence.

qualified surveyor means:

- (a) a person registered as a land surveyor under the [Surveying Act 2002](#), or
- (b) such other class of surveyor as the EPA may approve.

scheduled waste facility means a waste facility that is required to be licensed under the Act.

SMA means Sydney metropolitan area.

year means a year beginning on 1 July and ending on 30 June.

4A Payment of contributions

- (1) For the purposes of section 88 (3) (a) of the Act, each of the following is a prescribed manner for the payment of a contribution payable under that section:
 - (a) payment by cheque,
 - (b) payment by electronic funds transfer.
- (2) For the purposes of section 88 (3) (b) of the Act, the period of 60 days after the end of each month is prescribed as the time within which the contribution payable by an occupier is to be paid.

5 Contributions payable in relation to scheduled waste facilities where adequate records kept

- (1) For the purposes of section 88 (2) of the Act, the following contributions are prescribed as the contributions required to be paid by the occupiers of scheduled waste facilities:
- (a) the SMA amount for the year in which the waste is received for each tonne of waste that is received in that year at a scheduled waste facility located in the SMA,
 - (b) the ERA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located in the ERA, and
 - (ii) that has been generated outside the SMA,
 - (c) the SMA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located in the ERA, and
 - (ii) that has been generated in the SMA,
 - (d) the SMA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located outside the SMA and the ERA, and
 - (ii) that has been generated in the SMA,
 - (e) the ERA amount for the year in which the waste is received for each tonne of waste:
 - (i) that is received in that year at a scheduled waste facility located outside the SMA and the ERA, and
 - (ii) that has been generated in the ERA.
- (2) The SMA amount is as follows:
- (a) for a year, beginning on or after 1 July 2006 and ending on or before 30 June 2011—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (4),
 - (b) for a year, beginning on or after 1 July 2011—the amount, in dollars and cents,

calculated for the year in accordance with the formula in subclause (6).

(3) The ERA amount is as follows:

- (a) for a year, beginning on or after 1 July 2006 and ending on or before 30 June 2013—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (5),
- (b) for a year, beginning on or after 1 July 2013—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (6).

(4) The formula is:

$$G = (P + C) \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

G is the amount, in dollars and cents, being calculated.

P is the SMA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

C is:

- (a) for a calculation made for a year ending on or before 30 June 2010—\$7.00, or
- (b) for a calculation made for the year ending on 30 June 2011—\$6.00.

A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

(5) The formula is:

$$H = (M + R) \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

H is the amount, in dollars and cents, being calculated.

M is the ERA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

R is:

- (a) for a calculation made for a year ending on or before 30 June 2011—\$7.50, or

- (b) for a calculation made for a year beginning on or after 1 July 2011 and ending on or before 30 June 2013—\$1.50.

A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (6) The formula is:

$$S = T \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

S is the amount, in dollars and cents, being calculated.

T is the SMA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

A is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

B is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (7) The SMA amount and the ERA amount are to be rounded to the nearest 10 cents, and if the amount to be rounded is 5 cents, rounded up.
- (8) The amount of the contribution is to be adjusted in accordance with clause 11A.
- (9) If, at any time, the Australian Statistician issues a CPI number in substitution for a CPI number previously issued, the issue of the later CPI number is to be disregarded for the purposes of this clause.

6 Contributions payable in relation to scheduled waste facilities where inadequate records kept

- (1) Despite clause 5, the contributions payable for the purposes of section 88 (2) of the Act by the occupier of a scheduled waste facility are to be calculated by the EPA in accordance with this clause if there are no records, or inadequate records, of the tonnage of waste received by the waste facility in the relevant year.
- (2) The contribution payable is the SMA amount calculated:
- (a) in accordance with clause 5 (2) for the year in which the EPA makes the determination of the amount of the contribution, and

- (b) in relation to each tonne of waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is made.
- (3) The EPA is to estimate the tonnage of waste at the scheduled waste facility taking into consideration any or all of the following as the EPA considers appropriate in the circumstances:
 - (a) a volumetric survey of the facility concerned carried out by a qualified surveyor,
 - (b) available records in respect of the facility concerned,
 - (c) any information provided by an authorised officer who has seen or inspected the facility,
 - (d) any other information available to the EPA, such as video monitoring records, and records kept by persons not involved with the operation of the facility concerned.
- (4) If the EPA decides to base its estimate of the tonnage of waste received at the waste facility on a volumetric survey, it may (but need not) give the occupier of the waste facility a notice in writing:
 - (a) requiring the occupier to ensure that such a survey is carried out by a qualified surveyor within 21 days after the date of the notice, and
 - (b) requiring the occupier to ensure that a copy of the report of the qualified surveyor is forwarded to the EPA within 7 days after the occupier receives it.
- (5) The occupier of a waste facility must not fail to comply with a requirement of a notice referred to in subclause (4).

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

- (6) Any estimation of the tonnage of waste at a waste facility made for the purpose of this clause is to use the following formula in converting cubic metres of waste to tonnes of waste:

$$T = V \times 2$$

where:

T is the amount in tonnes of waste received.

V is the volume in cubic metres of the waste determined by the volumetric survey.

- (7) For the purposes of this clause, records are taken to be **inadequate records** if the EPA is of the opinion that they cannot be used to calculate the contribution payable under section 88 (2) of the Act because, for example, they are incomplete, inaccurate, inconsistent with other records (whether kept by the occupier of the waste facility

concerned or another person or body) or the information contained in the records has not been obtained by using appropriate methods.

7 Payment of contributions by holder of supervisory licence

In the case of a scheduled waste facility that is the subject of a supervisory licence as referred to in section 87 of the Act, the occupier who is not the holder of the supervisory licence is required to pay the contributions under section 88 (2) of the Act in respect of the waste facility unless that occupier and the public authority concerned have made an arrangement for the contributions to be paid by the public authority and have informed the EPA in writing of any such arrangement.

8 Interest on unpaid contributions

If a contribution or part of a contribution under section 88 of the Act is not paid by the date as specified by the EPA, the amount payable is to be increased by an amount of compound interest calculated daily, for the period from that specified date until the day on which the contribution or part is paid, at the rate that is the sum of the following:

- (a) 8 per cent per annum,
- (b) the cash rate target released by the Reserve Bank of Australia that is applicable for the first business day of that period.

9 Exemption of certain occupiers from requirement to pay contributions

The occupier of any of the following types of scheduled waste facility is exempt from the requirement to pay a contribution to the EPA under section 88 of the Act:

- (a) premises used as a waste storage facility, transfer facility or waste treatment facility (not being an incinerator), or for a combination of any of those uses,
- (b) premises used to dispose of only coal washery rejects, slags or virgin excavated natural material (or any combination of those types of waste).

10 Certain types of waste exempted from calculation of contributions

- (1) The following types of waste received at a scheduled waste facility are exempted from the calculation of the contribution payable for each tonne of waste received at the waste facility:
 - (a) any liquid waste lawfully discharged at the waste facility into waters (in accordance with a licence under the Act) or into a sewer,
 - (b) any ash residue generated at a scheduled waste facility that is an incinerator,
 - (c) any spoil generated by dredging activities,
 - (d) any waste collected in accordance with a community service or activity, or arising

from a biological outbreak or natural disaster, and that has been approved in writing for the purposes of this clause.

(e) (Repealed)

(2) If the occupier of a scheduled waste facility claims an exemption in respect of any type of waste referred to in subclause (1), the occupier must record the following details:

(a) the date on which the waste was received at the waste facility,

(b) the type and amount of waste received at the waste facility,

(c) particulars of the community service, activity, biological outbreak or natural disaster (if any) in respect of which the waste has been collected, including the date and number of the approval,

(d) if the waste remains at the waste facility:

(i) particulars of what has happened to the waste (for example, whether it has been used for a specific purpose at the waste facility or whether it has been disposed of, treated, or recovered, recycled or processed at the waste facility), and

(ii) particulars of the type of any such recovering, recycling or processing, and

(iii) the date on which the waste was so used, disposed of, treated or recovered, recycled or processed, and

(iv) the amount and type of waste concerned,

(e) if the waste is transported to other premises:

(i) the name and address of the other premises, and

(ii) if the waste is transported to a processing or recycling facility—the type of processing or recycling waste facility concerned, and

(iii) the date of transportation, and

(iv) the amount and type of waste transported.

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

(3) The occupier of a scheduled waste facility who claims an exemption in respect of any type of waste referred to in subclause (1) must:

(a) ensure that the records required to be made under subclause (2) are accurate and are retained for a period of at least 3 years from the date on which the exemption

is claimed, and

(b) make any such record available for inspection by an authorised officer on request.

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

(4) Despite subclause (1), waste is not exempt from the calculation of the contribution payable by the occupier of a scheduled waste facility if the occupier fails to comply with any requirement under subclause (2) or (3) with respect to the waste.

11 Approval of operational purpose

(1) An occupier of a scheduled waste facility may apply to have the use of waste for an operational purpose approved under this clause:

(a) before the waste has been used for an operational purpose, or

(b) after the waste has been used for an operational purpose.

(2) An application to have the use of waste for an operational purpose approved by the EPA must include the following:

(a) in the case of an application of the kind referred to in subclause (1) (a)—a plan for the use of the waste for an operational purpose,

(b) in the case of an application of the kind referred to in subclause (1) (b)—a report on the use of the waste for an operational purpose,

(c) such other information as the EPA may require to approve the application.

(3) The EPA may, on the application of the occupier of a scheduled waste facility, approve the use of waste for an operational purpose at the facility whether or not the waste has already been used for an operational purpose.

(4) If the EPA approves an operational purpose on an application made under this clause, the EPA must issue a certificate to the occupier of the scheduled waste facility certifying that the use of waste for an operational purpose has been approved.

(5) A certificate issued under subclause (4) must specify:

(a) the scheduled waste facility to which the certificate applies, and

(b) the operational purpose for which the waste is to be, or has been, used, and

(c) the amount of waste approved for the operational purpose, and

(d) in the case of an application of the kind referred to in subclause (1) (a)—the period in which the waste is to be used for that operational purpose, and

- (e) any conditions relating to the use of waste for that operational purpose.

11A Deductions from contributions

- (1) **Certain occupiers may make deductions** The occupier of a scheduled waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section:
 - (a) an amount in respect of waste that has been or is to be used for an approved operational purpose by the occupier (**approved operational purpose deduction**), or
 - (b) an amount in respect of waste received by the occupier that the occupier has transported to another place as referred to in subclause (3) (**transported waste deduction**).
- (2) **Waste used for an approved operational purpose** For the purpose of subclause (1) (a), waste has been or is to be used for an **approved operational purpose** if:
 - (a) a certificate has been issued under clause 11 in respect of the operational purpose, and
 - (b) the waste has been or is to be used in accordance with the requirements specified in the certificate pursuant to clause 11 (5).
- (3) **Transported waste deductions** A transported waste deduction is available to the occupier of a scheduled waste facility in respect of:
 - (a) waste that has been:
 - (i) recovered, recycled or processed at that facility to the extent or in the manner specified in the guidelines (if any) published or approved by the EPA from time to time for the purpose of this clause, and
 - (ii) transported to another place for a lawful use, or
 - (b) waste that has been transported to another facility for lawful recovery, recycling, processing or disposal.
- (4) **No deduction available in respect of certain waste** A deduction is not available in respect of waste that:
 - (a) has already been exempted, in accordance with clause 10, from the calculation of the contribution otherwise payable by the occupier, or
 - (b) was received at the facility more than 24 months before the date of the deduction.
- (5) An approved operational 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 specified in the certificate pursuant to clause 11 (5).

- (6) **Amount of deduction** A deduction under this clause is to be calculated on the basis of the rate of contribution that was applicable at the time that the waste was received at the waste facility concerned.
- (7) **Disallowance of deductions** The EPA may, by notice in writing to the occupier of a scheduled waste facility, disallow the whole or any part of a deduction made by the occupier under this clause, if the EPA is satisfied:
- (a) the occupier was not allowed to make the deduction, or
 - (b) the deduction is not available in respect of the waste.
- (8) A notice under subclause (7) may require the occupier to:
- (a) increase a specified contribution payable by the occupier by the whole or such part of the deduction made by the occupier under this clause as the EPA may determine, or
 - (b) pay to the EPA an amount equal to the whole or such part of the deduction made by the occupier under this clause as the EPA may determine.
- (9) **Rebate where deduction exceeds contribution** If the amount of a deduction to which the occupier of a scheduled waste facility is entitled under clause 11A exceeds the amount of the contribution payable by the occupier under section 88 of the Act, the occupier is entitled to a rebate of the amount by which the deduction exceeds the contribution.

12 Records to be kept by waste facilities

- (1) **Records for waste and other material received at scheduled waste facility** For each delivery of waste and other materials received at a scheduled waste facility, the occupier of the facility is to record the following information:
- (a) the amount and type of waste and other material delivered,
 - (b) the date the delivery was made,
 - (c) the registration number of the vehicle making the delivery,
 - (d) the particulars of where on the site the waste and other materials were placed at the facility,
 - (e) the particulars of any waste received that is exempted under clause 10 from the calculation of the contribution payable by the facility.
- (2) **Records for waste used for an operational purpose at a scheduled waste facility** For all

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

- (a) the nature of the operational 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.

(3) **Records for waste and other material stockpiled at a scheduled waste facility** For all waste and other material stockpiled at a scheduled waste facility, the occupier of the facility is required to record the following information:

- (a) a unique identification number for each stockpile,
- (b) the quantity and type of waste or other material held in each stockpile as at 30 June and 31 December of each year,
- (c) the quantity and type of waste or other material that is added to or removed from each stockpile each day.

(4) **Records for waste and other materials transported from a scheduled waste facility for use, recovery, recycling, processing or disposal at another place** For each load of waste and other materials transported by vehicle from a scheduled waste facility for use, recovery, recycling, processing or disposal at another place, the occupier of the facility is to record the following information:

- (a) the amount and type of waste, waste derived material and other material contained in the load,
- (b) the date the load was transported from the facility,
- (c) the registration number of the vehicle transporting the load,
- (d) details of the recycling, mixing, blending or processing (if any) applied to the waste leaving the facility including the composition as a proportion of waste and other material in any waste derived material in the load,
- (e) the address of the place to which any load of waste was transported.

(5) **Records to be accurate** The occupier of a scheduled waste facility that is required to record information under this clause is required to ensure that the records required to be kept under this clause are accurate and are retained for a period of at least 3 years from the date on which the record is made.

(6) **Records to be kept in accordance with guidelines** The occupier of a scheduled waste

facility that is required to record information under this clause is required to ensure that the records required to be kept under this clause are kept in accordance with the guidelines (if any) published by the EPA, from time to time, for the purposes of this subclause.

- (7) **Records to be made available on request** The occupier of a scheduled waste facility that is required to record information under this clause is required to make any such records available for inspection by an authorised officer on request.
- (8) **Occupier must comply with record keeping requirements** An occupier of a scheduled waste facility that fails to comply with any requirement of this clause is guilty of an offence.

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

13 Waste contribution monthly reports

The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must provide the EPA with the following information in the approved form of report within 60 days after the end of each month:

- (a) the quantity of waste received at the waste facility during the month to which the report relates,
- (b) the types of waste received at the waste facility during the month to which the report relates,
- (c) such other information in relation to the waste facility as may be specified by the EPA in the approved form of report.

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

14 Volumetric surveys

- (1) Subject to subclause (3), the occupier of a scheduled landfill site who is required to pay contributions under section 88 of the Act must cause a volumetric survey of the landfill site to be carried out by a qualified surveyor:
- (a) during June in each calendar year and provide the results to the EPA in the approved form and manner by no later than 31 July in that year, and
 - (b) during December in each year and provide the results to the EPA in the approved form and manner by no later than the following 31 January, and
 - (c) at any other time, or within any period, specified by the EPA by notice in writing given to the occupier.

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

(2) The occupier must:

- (a) keep a copy of the results of each survey, and
- (b) make those results available for inspection by an authorised officer on request.

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

(3) The EPA may, by notice in writing given to the occupier of a landfill site:

- (a) exempt the occupier from any requirement under subclause (1) until such time as the EPA decides to revoke the exemption by further written notice given to the occupier, or
- (b) defer the application of any such requirement in respect of the occupier until such time as is specified in the notice.

15 Weighbridges

(1) Subject to subclause (3), the occupier of a waste facility who is required to pay contributions under section 88 of the Act must:

- (a) if the waste facility receives over 20,000 tonnes of waste per year, ensure that there is an approved weighbridge installed at the waste facility, and
- (b) on and from 1 September 2006, if the waste facility receives over 10,000 tonnes of waste per year, ensure that there is an approved weighbridge installed at the waste facility.

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

(2) Subject to subclause (3), the occupier of a waste facility on which any such weighbridge is installed must:

- (a) submit to the EPA, within 30 days after installing the weighbridge, a plan of the waste facility indicating the proposed vehicle flow controls (including the entry and exit points where waste is transported into and out of the waste facility), and
- (b) if any change occurs in relation to those vehicle flow controls, submit a revised plan to the EPA no later than 30 days after the relevant change occurs, and
- (c) ensure that each vehicle (not being a motor car or a car trailer) transporting waste into or out of the waste facility uses the weighbridge so that the quantity of waste being transported is correctly recorded, and

- (d) ensure that any such weighbridge is maintained in proper working order, and
- (e) ensure that any such weighbridge is certified at least once a year in accordance with the [Trade Measurement Act 1989](#), and
- (f) keep a copy of the latest vehicle flow control plan, and the latest weighbridge certificate as referred to in paragraph (e), on the premises and make the plan and the certificate available for inspection by an authorised officer on request, and
- (g) notify the EPA of any incident that results in the weighbridge being out of operation for any period of more than 7 days, and
- (h) ensure that an approved alternative method of recording the quantity of waste that is transported into or out of the waste facility is used during any period that the weighbridge is out of operation, and
- (i) comply with any other requirement relating to the installation or operation of the weighbridge as the EPA may specify by notice in writing.

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

- (3) The EPA may, by notice in writing given to the occupier of a waste facility:
 - (a) exempt the occupier from any requirement under subclause (1) or (2) until such time as the EPA decides to revoke the exemption by further written notice given to the occupier, or
 - (b) defer the application of any such requirement in respect of the occupier until such time as is specified in the notice.

16 Video monitoring systems

- (1) The EPA may, by notice in writing, require the occupier of a waste facility who is required to pay contributions under section 88 of the Act to install an approved video monitoring system in the manner and location specified in the notice.
- (2) The EPA is not to make any such requirement unless it is of the opinion that the occupier has failed to pay the required contributions under the Act.
- (3) The occupier must:
 - (a) comply with any such requirement within the time specified in the notice, and
 - (b) ensure that video monitoring records are kept for at least one year from the time of the recording, and
 - (c) make such recordings available for inspection by an authorised officer on request.

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

Part 3 Waste tracking requirements

Division 1 Preliminary

17 Definitions

In this Part:

authorised agent, in relation to the transportation of waste, means a person appointed as an authorised agent for the transportation of the waste in accordance with clause 27.

consignment authorisation means:

- (a) in relation to the transport of waste to a waste facility in New South Wales, a consignment authorisation issued under Division 6 authorising the transport of the waste to that facility, and
- (b) in relation to the transport of waste to a waste facility in a participating State, an authority (however expressed) issued in accordance with the laws of that participating State and authorising the transport of the waste to that facility.

consignor of waste, in relation to waste that is transported from a waste facility means:

- (a) if the occupier of the facility has not appointed an authorised agent under clause 27—the occupier of the facility, or
- (b) if the occupier of the facility has appointed an authorised agent under clause 27 in relation to the waste—that authorised agent.

equivalent transport authorisation means a licence or other authority that:

- (a) has been issued by a participating State, and
- (b) corresponds (or is similar) to an environment protection licence authorising the carrying out of the scheduled activity of transporting waste.

NEPM means the document titled *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998*.

participating State means a participating State (other than New South Wales), or a participating Territory, within the meaning of NEPM.

receiver of waste means the occupier of a waste facility that has received waste from a consignor of waste.

transporter of waste means a person who transports waste.

waste transport certificate means a waste transport certificate in a form approved by the EPA for the purposes of this Part.

18 Transportation of waste to which Part applies

- (1) This Part applies to the transport of waste within New South Wales if the waste is of a type described in Part 1 of Schedule 1.
- (2) This Part applies to the transport of waste from New South Wales to a participating State, into New South Wales from a participating State or through New South Wales from one participating State to another if the waste is of a type described in Part 1 or Part 2 of Schedule 1.

Note—

Clause 39 (1) provides a defence in proceedings for an offence against this Part if the defendant establishes that although the waste concerned was of a type described in Part 1 or 2 of Schedule 1 it did not exhibit any of the characteristics specified in Part 3 of that Schedule.

19 Transportation of waste to which Part does not apply

Despite clause 18, this Part does not apply to the following:

- (a) the transportation of waste in an emergency to protect human health, the environment or property,
- (b) the transportation of waste to a person or body for the purpose of use in analysis relating to waste categorisation or in research, but only if the transportation and use of the waste has been approved in writing by the EPA (in the case of the transport of the waste to a place in New South Wales) or by the agency, within the meaning of NEPM, of a participating State (in the case of the transport of the waste to that State),
- (c) the transportation of waste by pipeline,
- (d) the transportation of any residue of a substance in a container if the container will be refilled with the same type of substance and the substance in the refilled container is intended for use,
- (e) the transportation from a farm of unwanted chemicals resulting from the operation of the farm, but only if:
 - (i) the transportation is carried out by the owner or occupier of the farm, and
 - (ii) the chemicals are transported to a collection place designated by a collection scheme approved in writing by the EPA or an agency of a participating State, and
 - (iii) the transportation is carried out without fee or reward being given,
- (f) the transportation of waste in accordance with a product recall approved by the Australian Pesticides and Veterinary Medicines Authority, Food Standards Australia

New Zealand or the Therapeutic Goods Administration of the Commonwealth.

20 Exemptions relating to other types of waste

The EPA may grant an exemption under clause 51 in relation to one or more of the provisions of this Part.

Division 2 Obligations on consignor of waste

21 (Repealed)

22 Obligations on consignor of waste relating to transportation of waste

- (1) A consignor of waste must ensure that the waste is not transported from one place to another place unless the consignor:
 - (a) holds a consignment authorisation in respect of the waste, and
 - (b) has obtained a waste transport certificate for the waste and has certified that any part of the certificate that is required to be completed by the consignor has been completed accurately, and
 - (c) has given the waste transport certificate to the transporter of the waste, and
 - (d) has ensured that the transporter is licensed (if required by or under the Act) to transport the waste, and
 - (e) has ensured that the waste facility to which the waste is to be transported is legally able to accept waste of the type concerned.
- (2) A consignor of waste must:
 - (a) retain each consignment authorisation for a period of not less than 4 years after the day on which the consignment authorisation is obtained by the consignor, and
 - (b) retain a copy of each waste transport certificate for a period of not less than 4 years after the day on which a copy of the certificate was given by the consignor to the transporter of the waste, and
 - (c) make each document retained under paragraphs (a) and (b) available for inspection by an authorised officer on request.
- (3) A consignor of waste must not contravene or fail to comply with any condition of a consignment authorisation that is held by the consignor.

Maximum penalty (subclauses (1)–(3)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

23 Copy of waste transport certificate to be given to occupier of waste facility

Within 7 days after the day on which an authorised agent for the occupier of a waste facility gives a waste transport certificate to the transporter of the waste under clause 22 (1) (c), the authorised agent must give the occupier a copy of the waste transport certificate in the same form as it was given by the agent to the transporter.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

Division 3 Obligations on transporter of waste

24 Obligations on transporters of waste

- (1) A transporter of waste must:
 - (a) before transporting the waste, certify that any part of the waste transport certificate for the waste that is required to be completed by the transporter has been completed accurately, and
 - (b) before transporting the waste, ensure that there is a consignment authorisation that authorises the transport of the waste, and
 - (c) carry in the vehicle transporting the waste the waste transport certificate for the waste.
- (2) Except as provided by subclause (3), a transporter of waste must not remove the waste, or cause the waste to be removed, from the vehicle transporting the waste except in the following circumstances:
 - (a) the receiver of the waste has been given the waste transport certificate in respect of the waste and has consented to the waste being removed,
 - (b) there is no waste transport certificate in respect of the waste but the receiver of the waste has consented to the waste being removed and is lawfully able to store the waste,
 - (c) the waste is being directly transferred to another vehicle, the transfer is recorded on the waste transport certificate and the waste transport certificate is given to the transporter operating the other vehicle.
- (3) A transporter of waste must remove the waste, or cause the waste to be removed, from the vehicle transporting the waste in accordance with the directions of an authorised officer if requested by the officer to do so.
- (4) A transporter of waste that has been rejected by the receiver of waste to whom the waste was delivered must:
 - (a) obtain the waste transport certificate for the waste endorsed by the receiver with

the information that the receiver has rejected the waste, and

- (b) transport the waste to the waste facility identified under clause 26 (2) by the receiver.

Note—

Clause 26 (3) provides that a consignment authorisation and waste transport certificate relating to waste that has been rejected by a receiver of waste are taken to authorise the transport of the waste to a waste facility at which the waste can be legally accepted.

- (5) A transporter of waste has a defence to a contravention of subclause (4) (b) if the transporter:
 - (a) is not informed in accordance with clause 26 (2) of another waste facility to which the waste may be transported, and
 - (b) notifies the EPA in writing, within 3 working days after removing the waste from the waste facility at which it was rejected, of the waste facility to which the transporter transported the waste after it was rejected.
- (6) A transporter of waste must not contravene or fail to comply with any condition of a consignment authorisation for waste that is being transported by the transporter.

Maximum penalty (subclauses (1)–(4) and (6)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

Division 4 Obligations on receiver of waste

25 Obligations on receiver of waste relating to waste

- (1) Before accepting any waste, a receiver of waste must (except as provided by subclause (2)):
 - (a) ensure that there is a consignment authorisation that authorises the transport of the waste, and
 - (b) obtain the waste transport certificate for the waste, and
 - (c) certify that any part of the certificate that is required to be completed by the receiver has been completed accurately.
- (2) A receiver of waste may accept waste if:
 - (a) there is no valid consignment authorisation or waste transport certificate for the waste or the waste transport certificate is inaccurate, and
 - (b) the receiver is licensed to store the waste.
- (3) If waste is transported to a waste facility without a waste transport certificate, the

receiver of waste who occupies the facility must:

- (a) generate a waste transport certificate for the waste, and
- (b) complete as much of the certificate (including any parts that are required to be completed by the consignor and transporter except any signature or certification required) as is possible for the receiver to complete based on the information available to the receiver.

(4) A receiver of waste must:

- (a) within 3 working days after waste arrives at a waste facility occupied by the receiver, notify the EPA in writing if the waste was delivered without a valid consignment authorisation or waste transport certificate, and
- (b) within 3 working days of accepting or rejecting waste, notify the EPA in writing if the receiver considers that the transport certificate for the waste is inaccurate and of the ways in which the receiver considers the certificate to be inaccurate, and
- (c) in a case where the waste is rejected, notify the EPA in writing within 3 days after the waste is rejected that the waste has been rejected and the date on which it was rejected.

(5) If waste is transported to a waste facility, the receiver of waste who occupies the facility must within 14 days after accepting or rejecting the waste, notify the consignor in writing whether the receiver has accepted or rejected the waste.

(6) If waste is transported to a waste facility, the receiver of waste who occupies the facility must:

- (a) as soon as practicable after the waste arrives at the facility, record on the waste transport certificate the date on which the waste arrived, and
- (b) within 21 days of the arrival of the waste or such longer period as is permitted in writing by the EPA, record on the waste transport certificate for the waste whether the receiver has accepted or rejected the waste and the date on which the waste was accepted or rejected, and
- (c) in a case where the waste is accepted and is processed at the facility, record on the waste transport certificate, within 3 days after the waste is processed, the date on which the waste was processed and the method of processing used, and
- (d) in a case where the waste is accepted and is only stored at the facility, record on the waste transport certificate that the waste has been accepted for storage only, within 3 days.

Maximum penalty (subclauses (1) and (3)–(6)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

26 Receiver of waste may accept or reject waste

- (1) If a receiver of waste accepts waste delivered to a waste facility occupied by the receiver, any subsequent transport of the waste from the waste facility is to be treated as a new consignment of the waste for the purposes of this Part and, accordingly, requires a new consignment authorisation and waste transport certificate.

Note—

Under clause 21 (2), a receiver of waste who accepts waste is taken to be the consignor of the waste in relation to the transport of the waste from the waste facility at which it was accepted to another place.

- (2) If a receiver of waste rejects waste delivered to the receiver, the receiver must inform the transporter of the waste of a waste facility to which the waste may be transported, being a waste facility at which the waste can be legally accepted.

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

- (3) For the purposes of this Part, a consignment authorisation or waste transport certificate for waste that has been rejected by a receiver of waste is taken to authorise the transport of the waste to a waste facility at which the waste can legally be accepted.

Division 5 Authorised agents

27 Appointment of authorised agent

- (1) An occupier of a waste facility may appoint a person as an authorised agent in relation to the transportation of the waste.
- (2) The appointment of a person as an authorised agent of the occupier of a waste facility has no effect for the purposes of this Part unless:
 - (a) the person is the holder of an approval under clause 28 that is in force, and
 - (b) the appointment is evidenced by an agreement in writing between the person and the occupier that clearly specifies that the person is appointed as an authorised agent of the occupier for the purposes of this Part and is appointed to carry out the obligations of a consignor of the waste under this Part.
- (3) The EPA may require (either generally or in a particular case or class of cases) that any such agreement be in a form approved by the EPA.
- (4) A person must not act as an authorised agent for the purposes of this Part unless:
 - (a) the person is the holder of an approval under clause 28 that is in force, and
 - (b) the person has been appointed by the occupier of the waste facility as the occupier's authorised agent in accordance with this clause, and

(c) the appointment is evidenced as referred to in subclause (2) (b).

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

- (5) A person appointed in accordance with this clause by the occupier of a waste facility to be an authorised agent of the occupier must, within 7 days after the person's approval under clause 28 has been revoked, notify the occupier or in writing of the revocation of the approval.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

28 Approval of authorised agents

- (1) The EPA may grant an approval in writing to a transporter or a receiver of waste authorising the appointment of the transporter or receiver as an authorised agent.
- (2) An approval may be issued subject to conditions.
- (3) The EPA may revoke an approval for any reason.
- (4) The EPA is not to revoke an approval unless it has given at least 14 days' notice in writing to the holder of the approval stating the reasons for the revocation.
- (5) The holder of an approval must not contravene or fail to comply with any condition of the approval.

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

- (6) For the purposes of this Part, an approval of a person as an authorised agent that is revoked after waste has been transported from the premises of the occupier for whom the person was appointed as authorised agent is taken to continue in force in respect of the transportation of the waste, but only until the waste is transported to a waste facility at which the waste is accepted.

Division 6 Consignment authorisations

29 Issue of consignment authorisations

- (1) The EPA or a receiver of waste approved under clause 30 by the EPA may issue a consignment authorisation to a consignor of waste in respect of the transport of waste to a waste facility in New South Wales.
- (2) A consignment authorisation is to be in a form approved by the EPA.
- (3) A consignment authorisation may authorise:

- (a) the transportation of waste on one or more occasions, and
 - (b) the transportation of waste from one or more waste facilities.
- (4) A receiver of waste must not issue a consignment authorisation unless the authorisation:
- (a) is issued in accordance with the approval granted to the receiver under clause 30, and
 - (b) is in a form approved by the EPA, and
 - (c) is issued to a consignor of waste, and
 - (d) only authorises the transport of the waste to a waste facility occupied by the receiver issuing the authorisation, and
 - (e) is only issued for the transport of waste that the receiver issuing the authorisation could legally accept at that waste facility.

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

- (5) A consignment authorisation has effect for such period (not exceeding 12 months from the date of its issue) as is specified in the consignment authorisation.
- (6) A consignment authorisation may be revoked for any reason by the EPA or by a receiving facility that issued it.
- (7) The EPA or a receiving facility is not to revoke a consignment authorisation unless it has given at least 7 days' notice in writing to the holder of the approval stating the reasons for the revocation.

30 Approval of receivers of waste to issue consignment authorisations

- (1) The EPA may grant an approval in writing to a receiver of waste for the purposes of issuing consignment authorisations.
- (2) An approval may be issued subject to conditions.
- (3) The EPA may revoke an approval for any reason.
- (4) The EPA is not to revoke an approval unless it has given at least 7 days' notice in writing to the holder of the approval stating the reasons for the revocation.

31 Expired or revoked consignment authorisation

For the purposes of this Part, a consignment authorisation that authorised the transport of waste to a waste facility and that expires or is revoked after the waste leaves the place from which it is being transported is taken to continue in force in respect of that waste

only until the waste is delivered to a waste facility at which it is accepted.

Division 7 Record keeping and returns

32 Record keeping requirements relating to occupiers of waste facilities

An occupier of a waste facility who is not a consignor of the waste must retain the following records for at least 4 years:

- (a) copies of each waste transport certificate given to the occupier of a waste facility by the consignor of the waste,
- (b) copies of each agreement evidencing the appointment of an authorised agent as referred to in clause 27 (2) (b).

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

33 Record keeping requirements relating to consignors of waste

A consignor of waste must retain the following records for at least 4 years:

- (a) copies of each waste transport certificate required to be completed by the consignor under this Part,
- (b) if the consignor is an authorised agent of one or more occupiers of waste facilities, a list of premises from which waste that was the subject of such a waste transport certificate was transported,
- (c) if the consignor is an authorised agent of one or more occupiers of waste facilities, copies of each agreement entered into by the consignor as referred to in clause 27 (2) (b).

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

34 Record keeping requirements relating to transporters of waste

A transporter of waste must retain, for at least 4 years, copies of each waste transport certificate required to be completed by the transporter under this Part.

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

35 Record keeping requirements relating to receivers of waste

A receiver of waste must retain the following records for at least 4 years:

- (a) copies of each consignment authorisation issued by the receiver,

- (b) each waste transport certificate given to the receiver for waste accepted by the receiver and each waste transport certificate generated by the receiver,
- (c) copies of each notice required to be given to the EPA under this Part.

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

36 Returns by receivers of waste

A receiver of waste:

- (a) must provide the EPA (or such other person or body as may be approved for the purposes of this clause) with such information as the EPA (or other person or body) may require from time to time in relation to the waste received by the receiver, including (but not limited to) a description of the waste, the quantity of the waste and the proposed treatment intended for the waste, and
- (b) must retain a copy of the information provided for a period of at least 4 years from the time it was provided.

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

37 Approved record-keeping systems

- (1) The EPA may approve a system (whether a paper-based system or an electronic system) for the purpose of keeping the records and giving the notices and other documentation required by this Part.
- (2) Without limiting clause 20, the EPA may grant an exemption under clause 51 that exempts a person required to keep records or submit notices or other documentation under this Part from any of the provisions of this Part if the person has established a system approved by the EPA under subclause (1).

Division 8 Miscellaneous

38 Exemption relating to authorised interstate transporters of waste

- (1) This clause applies to any person who holds an equivalent transport authorisation and transports waste into or through New South Wales or from New South Wales to a participating State.
- (2) A person to whom this clause applies is, to the extent that the person transports waste into, through or from New South Wales, exempt from section 49 (2) of the Act.
- (3) Any such exemption is subject to the person complying with the conditions of the person's equivalent transport authorisation to the extent that those conditions apply

to the transporting of waste to which this Part applies.

39 Defences

- (1) It is a defence to proceedings for an offence against any provision of this Part if the defendant establishes that although the waste concerned was of a type described in Part 1 or 2 of Schedule 1 it did not exhibit any of the characteristics specified in Part 3 of that Schedule.
- (2) It is a defence to proceedings for an offence against any provision of this Part relating to the transportation of waste if the defendant establishes that:
 - (a) the waste concerned was being transported through New South Wales to a participating State, and
 - (b) the waste was not loaded or unloaded in New South Wales, and
 - (c) the person complied with the laws of the place from which the waste was transported and the place to which the waste was being transported.

40 Offences relating to false information about waste

- (1) An occupier of a waste facility, or a consignor, transporter or receiver of waste must not supply information about the waste to another person if the information is false or misleading in a material respect.
- (2) An authorised agent for an occupier of a waste facility must notify the EPA within 3 working days of becoming aware that the occupier has given information about the waste to the agent that is false or misleading in a material respect.
- (3) In this clause, information about waste is **false or misleading in a material respect** if:
 - (a) it misrepresents the type, classification or characteristics of the waste, or
 - (b) it misrepresents the hazards or potential harm to human health or the environment associated with the transport, handling, deposit, disposal, storage, processing, recycling, recovery, re-use or use of the waste.

Maximum penalty (subclauses (1) and (2)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

41 Approved forms

- (1) The EPA may approve the form of any authorisation, certificate, notice, report or other document to be used for the purposes of this Part.
- (2) If a provision of this Part requires the giving or keeping (however expressed) of a document for which a form has been approved under this clause, the provision is to be

read as requiring the giving or keeping of a document that complies with the approved form.

Part 4 Management of special wastes

42 Special requirements relating to asbestos waste

- (1) This clause applies to any activity that involves the transportation, collection, storage, or disposal of any type of asbestos waste, regardless of whether the activity is required to be licensed.
- (2) A person who carries on an activity to which this clause applies must comply with the requirements specified in this clause in relation to the activity concerned.

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

- (3) The requirements relating to the transportation of asbestos waste are as follows:
 - (a) any type of asbestos waste must not be transported unless it is conveyed in a covered leak-proof vehicle so as to prevent any spillage or dispersal of the waste,
 - (b) if asbestos waste that is in the form of stabilised asbestos waste in bonded matrix is to be transported and the waste is not stored in a bag in accordance with subclause (4) (c), the waste must be wetted before it is transported,
 - (c) any vehicle used to transport any type of asbestos waste must be cleaned before leaving the landfill site at which the waste is disposed of so as to ensure that all residual asbestos waste is removed from the vehicle.
- (4) The requirements relating to the collection and storage of asbestos waste are as follows:
 - (a) asbestos waste that is in the form of asbestos fibre and dust waste must be covered in such a manner as to prevent the emission of any dust,
 - (b) asbestos waste that is in the form of asbestos fibre and dust waste must not be collected and stored except in accordance with the following procedures:
 - (i) the waste must be collected and stored in impermeable bags,
 - (ii) each bag must be made of heavy duty low density polyethylene of at least 0.2 mm thickness, and have dimensions of no more than 1.2 m in height and 0.9 m in width,
 - (iii) each bag must be sealed by a wire tie, and contain no more than 25 kg of waste,
 - (iv) each bag must be marked with the words "CAUTION ASBESTOS" in letters of

not less than 40 mm and which comply with AS 1319—1994, *Safety signs for the occupational environment*,

- (c) if asbestos waste in any form is stored in a bag, the following procedures must be followed:
 - (i) the bag must be placed in a leak-proof container that is used only for the purposes of storing asbestos waste,
 - (ii) the container must be marked with the words “DANGER—ASBESTOS WASTE ONLY—AVOID CREATING DUST” in letters of not less than 50 mm and which comply with the Australian Standard referred to in paragraph (b) (iv),
 - (iii) the container must have a close-fitting sealed cover so as to prevent any spillage or dispersal of the waste,
 - (d) asbestos waste in any form must not be stored except in accordance with the following procedures:
 - (i) the waste must be stored in a secure area so as to prevent entry by unauthorised persons and to prevent the risk of environmental harm,
 - (ii) the waste must, if it is practicable to do so, be stored separately from other types of waste,
 - (e) if asbestos waste that is in the form of stabilised asbestos waste in bonded matrix is stored otherwise than in a bag in accordance with paragraph (c), the following procedures must be followed:
 - (i) if it is practicable to do so, the waste must be wetted so as to prevent the emission of any dust,
 - (ii) in wetting the asbestos waste, care must be taken to ensure that the wetting process does not cause any emission of dust or lead to any discharge of polluted water,
 - (iii) the waste must be kept covered at all times.
- (5) The requirements relating to the disposal of asbestos waste are as follows:
- (a) asbestos waste in any form must be disposed of only at a landfill site that may lawfully receive the waste,
 - (b) disposal of asbestos waste in any form must be by way of burial,
 - (c) before disposal of the asbestos waste, arrangements must be made with the occupier of the landfill site for the purposes of ensuring that the asbestos waste will be covered:

- (i) initially to a depth of at least 0.5 m, and
- (ii) finally to a depth of at least 1 m (in the case of stabilised asbestos waste in bonded matrix) or 3 m (in the case of asbestos fibre and dust waste) beneath the planned final land surface of the landfill site,
- (d) the asbestos waste must:
 - (i) be disposed of in accordance with the arrangements under paragraph (c), and
 - (ii) be buried to the initial depth on the same day it is received at the landfill site,
- (e) in disposing of asbestos waste in any form at a landfill site, the waste must:
 - (i) be unloaded in such a manner as to avoid the creation of dust, and
 - (ii) not be compacted before it is covered, and
 - (iii) not come into contact with any earthmoving equipment at any time.
- (6) A person must not cause asbestos waste in any form to be used as road making material.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (7) In this clause, **asbestos waste** means any waste that contains asbestos as defined in the Waste Guidelines.

43 Special requirements relating to clinical waste

If a person disposes of clinical waste at a waste facility that is not licensed under the Act, the person must comply with the following requirements:

- (a) the waste must be disposed of only at a waste facility that is operated by a local authority and located outside the Sydney metropolitan area or extended regulated area,
- (b) the written approval of the local authority must be obtained before the waste is disposed of,
- (c) the waste must not be disposed of unless it was generated outside the Sydney metropolitan area or extended regulated area,
- (d) the waste must not contain any recognisable body parts, sharps waste, cytotoxic waste or radioactive waste,
- (e) the waste must be packaged in accordance with the requirements set out in the document called *NSW Health: Waste Management Guidelines for Health Care Facilities* issued by the Department of Health and dated August 1998,

- (f) the waste must not be disposed of in amounts that exceed 40 kg at any one time,
- (g) the waste must be buried, or be immediately contained, in a manner that prevents the waste coming into contact with any person or animal.

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

Part 5 Prohibition against using certain waste for growing vegetation

44 Definitions

In this Part:

apply waste to land includes (but is not limited to) application by:

- (a) spraying, spreading or depositing the waste on the land, or
- (b) ploughing, injecting or mixing the waste into the land.

residue waste means any of the following substances (and includes any substance incorporating, mixed with or made from any of the following substances):

- (a) fly ash or bottom ash from any furnace,
- (b) lime or gypsum residues from any industrial or manufacturing process,
- (c) residues from any industrial or manufacturing process that involves the processing of mineral sand,
- (d) substances that have been used as catalysts in any oil refining or other chemical process,
- (e) foundry sands and foundry filter bag residues,
- (f) residues from any industrial or manufacturing process that involves the refining or processing of metals or metallic products,
- (g) any substance that is hazardous waste, industrial waste or Group A waste.

45 Residue waste not to be applied to certain land

- (1) A person must not apply residue waste, or cause or permit residue waste to be applied, to any land that is used for the purpose of growing vegetation, including but not limited to land used for agricultural, horticultural, silvicultural, pastoral or environmental rehabilitation purposes.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence against this clause if the person establishes that the waste that was applied to the land had been lawfully sold as a soil improving agent or a trace element product within the meaning of the *Fertilisers Act 1985*.

46 Exemptions relating to residue waste

The EPA may from time to time grant an exemption under clause 51 that exempts a person from any one or more of the following provisions in relation to an activity or class of activities relating to residue waste, or a class of residue waste:

- (a) sections 47–49 and 88 of the Act,
- (b) the provisions of Schedule 1 to the Act,
- (c) the provisions of Part 3 and clause 45 of this Regulation.

Part 5A Waste performance improvement scheme

46A Definitions

In this Part:

eligible council, in respect of any year, means a local council whose application for a waste performance improvement payment has been approved under clause 46C for that year.

regulated area means the extended regulated area and the Sydney metropolitan area.

waste performance improvement guidelines means the guidelines in force from time to time under clause 46B.

waste performance improvement payment means a waste performance improvement payment under this Part.

year has the same meaning as in Part 2.

46B Waste performance improvement guidelines

- (1) The EPA may, from time to time, issue guidelines establishing performance standards to be met by local councils in relation to the use, recovery, recycling, processing and disposal of waste.
- (2) The EPA may from time to time amend, revoke or replace the waste performance improvement guidelines.
- (3) The waste performance improvement guidelines in force for the time being must be made publicly available in such manner as the EPA thinks appropriate.
- (4) In the event of any inconsistency between a provision contained in the waste

performance improvement guidelines and this Regulation, the latter is to prevail.

46C Application for waste performance improvement payments

- (1) Commencing 1 July 2006, a local council within the regulated area may each year apply to the EPA for a waste performance improvement payment in relation to its compliance with the waste performance improvement guidelines.
- (2) An application under this clause:
 - (a) must be made in such manner and form as is prescribed by the waste performance improvement guidelines, and
 - (b) must be accompanied by such evidence as is required by the waste performance improvement guidelines, and
 - (c) must be lodged with the EPA within the time specified by notice in writing by the EPA.

46D Determination of application

- (1) The EPA may determine an application for a waste performance improvement payment by:
 - (a) approving the application, or
 - (b) refusing the application.
- (2) The EPA may approve an application only if the local council has, in the opinion of the EPA, complied with the requirements of the waste performance improvement guidelines.

46E Calculation of amount of waste performance improvement payment

- (1) The amount of the waste performance improvement payment to which an eligible council is entitled in any year is to be calculated in accordance with the following formula:

$$D = (B \times (\$3 \times N)) \times \left(\frac{P}{T}\right)$$

where:

D is the amount of the payment, in dollars and cents.

B is the total amount of household waste, in tonnes, disposed of during the previous year by or on behalf of local councils within the regulated area (whether or not they are eligible councils) as calculated by the EPA.

N is:

- (a) for the year ending 30 June 2007—1, or
- (b) for the year ending 30 June 2008—2, or
- (c) for the year ending 30 June 2009—3, or
- (d) for the year ending 30 June 2010—4, or
- (e) for any year ending after 30 June 2010—5.

P is the population of the local council's local government area.

T is the total population of the local government areas of all eligible councils within the regulated area.

- (2) For the purposes of subclause (1), the population of a local government area is the population of the area, as estimated by the Australian Statistician in the Australian Statistician's latest publication on regional population growth in Australia.

46F Payment of waste performance improvement payments

The Director-General of the Department of Environment and Conservation must pay to an eligible council any waste performance improvement payment to which the council is entitled under this Part.

Part 6 Miscellaneous

47 Reporting requirements for non-licensed landfill sites

- (1) This clause applies to any landfill site that is not licensed under the Act.
- (2) However, this clause does not apply to:
 - (a) any premises where waste disposal is carried out otherwise than for business or other commercial purposes, or
 - (b) landfill sites that receive virgin excavated natural material only (and not any other type of waste).
- (3) The occupier of a landfill site to which this clause applies who has not previously provided the following details to the EPA must provide those details before 1 October 2005 or, in the case of any such landfill site that is established on or after 1 September 2005, within 30 days after being so established:
 - (a) the location of the landfill site,
 - (b) the name and address of the occupier of the landfill site.
- (4) The EPA may, by notice in writing given to the occupier of a landfill site to which this clause applies, require the occupier to complete the approved form relating to the

landfill site. The occupier must return the completed form to the EPA within 60 days of receiving the notice.

- (5) Within 60 days after the end of each subsequent financial year, the occupier of a landfill site to which this clause applies must provide, in the approved form, the EPA with such information as the EPA requires in respect of the landfill site.

Maximum penalty (subclauses (3)–(5)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

48 Requirements relating to storage of waste generally

A person who stores waste on premises (whether or not the waste was produced on the premises) must ensure that it is stored in an environmentally safe manner.

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

49 Requirements relating to transportation of waste generally

A person who transports waste (whether or not required to hold a licence) must comply with the following requirements:

- (a) any vehicle used for the transport of the waste must be constructed and maintained so as to prevent spillage of the waste,
- (b) any container used to transport the waste must be secured safely on the vehicle used to transport the waste,
- (c) any waste that is transported by a vehicle must be covered during its transportation unless the waste consists solely of tyres or scrap metal (or both),
- (d) incompatible wastes must not be mixed or transported together on any vehicle used by the person to transport waste,
- (e) any material segregated for recycling that is transported by the person must not be mixed with other waste.

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

50 Immobilisation of contaminants in waste

- (1) The EPA may from time to time approve the immobilisation of contaminants in waste.
- (2) Such an approval has the effect of enabling the waste to which the approval relates to be assessed and classified in accordance with the procedures set out in the Waste Guidelines relating to immobilisation.

- (3) An approval under this clause may be a **general approval** or a **specific approval**.
- (4) A general approval may be given by way of notice published in the Gazette. A specific approval may be given after an application is made to the EPA.
- (5) An application for a specific approval must:
 - (a) be in the approved form, and
 - (b) be accompanied by such fee (if any) as the EPA may determine, and
 - (c) identify the contaminants to be immobilised, and
 - (d) be accompanied by such evidence as may be required by the EPA for the purposes of ascertaining whether the identified contaminants in the waste will be immobilised and will remain immobilised after disposal of the waste.
- (6) An approval is subject to such conditions as may be imposed by the EPA.
- (7) Without limiting the conditions to which an approval is subject, the EPA may impose conditions for or with respect to the following:
 - (a) disposal of the waste to which the approval relates,
 - (b) notification of certain matters to the EPA,
 - (c) record keeping requirements,
 - (d) the immobilisation of the contaminants concerned.
- (8) In giving an approval under this clause, the EPA is required to identify a person (or class of persons) to whom the approval relates (the **responsible person**).
- (9) A general approval may be amended or revoked by the EPA by way of notice published in the Gazette.
- (10) A specific approval may be amended or revoked by the EPA by way of written notice given to the responsible person.
- (11) If an approval is given under this clause, the responsible person must comply with the conditions to which the approval is subject.

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

51 General provisions relating to exemptions

- (1) The EPA may grant an exemption under this clause if authorised to do so by another provision of this Regulation.

- (2) An exemption may be granted in relation to:
 - (a) any person or class of persons, or
 - (b) any premises or class of premises, or
 - (c) any area or class of areas, or
 - (d) any activity or class of activities, or
 - (e) any other matter or thing or class of matters or things.
- (3) An exemption granted under this clause may be a **general exemption** or a **specific exemption**.
- (4) A general exemption may be given by way of notice published in the Gazette. A specific exemption may be given after an application is made to the EPA.
- (5) An application for a specific exemption must:
 - (a) be in the approved form, and
 - (b) be accompanied by such fee (if any) as the EPA may determine, and
 - (c) be accompanied by such information, documents or evidence as may be required by the EPA for the purposes of determining whether the exemption should be given.
- (6) An exemption under this clause is subject to such conditions as may be imposed by the EPA.
- (7) In giving an exemption under this clause, the EPA may, in relation to a general exemption, and must, in relation to a specific exemption, identify a person (or class of persons) to whom the exemption relates (the **responsible person**).
- (8) A general exemption may be amended or revoked by the EPA by way of notice published in the Gazette.
- (9) A specific exemption may be amended or revoked by the EPA by way of written notice given to the responsible person.
- (10) If an exemption is given under this clause for which a responsible person is identified, the responsible person must comply with the conditions to which the exemption is subject.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

52 Offence of providing false information

A person must not, in or in connection with any application, claim or requirement under this Regulation, provide any information, or make any statement or record, that is false or misleading in a material respect.

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

53 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the commencement of this clause, had effect under the *Protection of the Environment Operations (Waste) Regulation 1996* is taken to have effect under this Regulation.
- (2) Despite any other provision of this Regulation, a person is not entitled to claim a rebate under clause 11 in respect of a period occurring before the commencement of that clause unless the rebate could have been claimed under the *Protection of the Environment Operations (Waste) Regulation 1996* (as in force before that commencement).
- (3) A person who, immediately before the commencement of this clause, held a licence for the transporting of waste that authorised the person to act as an authorised contractor is taken for the period of 3 months after that commencement to hold an approval as an authorised agent under clause 28 that:
 - (a) is subject to the same terms and conditions that applied to the person's authorisation as an authorised contractor, and
 - (b) may be revoked by the EPA in accordance with that clause.
- (4) Part 2, as in force immediately before the amendment of that Part by the *Protection of the Environment Operations (Waste) Amendment (Waste Reduction) Regulation 2006*, continues to apply in respect of waste received at a scheduled waste facility on or before 30 June 2006.

54 Interim regulatory provisions

The provisions of the *Protection of the Environment Operations (Waste) Regulation 1996* (as in force immediately before 1 September 2005 and including the uncommenced provisions of Part 2) are prescribed as a regulation under the Act:

- (a) except as provided by paragraph (b), with effect on and from 1 September 2005 until 1 March 2006, and
- (b) in relation to the provisions of Part 2, with effect on and from 1 December 2005 until 1 March 2006.

Note—

Part 2 of the *Protection of the Environment Operations (Waste) Regulation 1996* (which was inserted by the *Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005*) has a commencement date of 1 December 2005.

55 Amendment of *Protection of the Environment Operations (Penalty Notices) Regulation 2004*

The *Protection of the Environment Operations (Penalty Notices) Regulation 2004* is amended as set out in Schedule 2.

Schedule 1 Waste to which waste tracking requirements apply

(Clauses 18 and 39)

Part 1 Waste transported within NSW or interstate and required to be tracked

Description

Acidic solutions or acids in solid form

Antimony; antimony compounds

Arsenic; arsenic compounds

Barium compounds (excluding barium sulphate)

Basic solutions or bases in solid form

Beryllium; beryllium compounds

Boron compounds

Cadmium; cadmium compounds

Ceramic-based fibres with physico-chemical characteristics similar to those of asbestos

Chlorates

Chromium compounds (hexavalent and trivalent)

Clinical and related wastes

Cobalt compounds

Containers and drums that are contaminated with residues of substances referred to in this Part

Copper compounds

Cyanides (inorganic)

Cyanides (organic)

Encapsulated, chemically-fixed, solidified or polymerised wastes

Ethers

Filter cake

Fire debris and fire washwaters

Fly ash

Halogenated organic solvents

Highly odorous organic chemicals (including mercaptans and acrylates)

Inorganic fluorine compounds excluding calcium fluoride

Inorganic sulfides

Isocyanate compounds

Lead; lead compounds

Mercury; mercury compounds

Metal carbonyls

Nickel compounds

Non toxic salts

Organic phosphorous compounds

Organic solvents excluding halogenated solvents

Organohalogen compounds—other than substances referred to in this Part or Part 2

Perchlorates

Phenols, phenol compounds including chlorophenols

Phosphorus compounds excluding mineral phosphates

Polychlorinated dibenzo-furan (any congener)

Polychlorinated dibenzo-p-dioxin (any congener)

Residues from industrial waste treatment/disposal operations

Selenium; selenium compounds

Soils contaminated with a substance or waste referred to in this Part

Surface active agents (surfactants), containing principally organic constituents and which may contain metals and inorganic materials

Tellurium; tellurium compounds

Thallium; thallium compounds

Triethylamine catalysts for setting foundry sands

Vanadium compounds

Waste chemical substances arising from research and development or teaching activities, including those which are not identified and/or are new and whose effects on human health and/or the environment are not known

Waste containing peroxides other than hydrogen peroxide

Waste from heat treatment and tempering operations containing cyanides

Waste from manufacture, formulation and use of wood-preserving chemicals

Waste from the production, formulation and use of biocides and phytopharmaceuticals

Waste from the production, formulation and use of inks, dyes, pigments, paints, lacquers and varnish

Waste from the production, formulation and use of organic solvents

Waste from the production, formulation and use of photographic chemicals and processing materials

Waste from the production, formulation and use of resins, latex, plasticisers, glues and adhesives

Waste from the production and preparation of pharmaceutical products

Waste mineral oils unfit for their original intended use

Waste oil/water, hydrocarbons/water mixtures or emulsions

Waste pharmaceuticals, drugs and medicines

Waste resulting from surface treatment of metals and plastics

Waste tarry residues arising from refining, distillation, and any pyrolytic treatment

Waste substances and articles containing or contaminated with polychlorinated biphenyls, polychlorinated naphthalenes, polychlorinated terphenyls and/or polybrominated biphenyls

Waste of an explosive nature not subject to other legislation

Zinc compounds

Part 2 Waste transported interstate and required to be tracked

Animal effluent and residues (abattoir effluent, poultry and fish processing wastes)

Asbestos

Containers and drums that are contaminated with residues of waste referred to in this Part

Grease trap waste

Sewage sludge and residues including nightsoil and septic tank sludge

Soils contaminated with a substance or waste referred to in this Part

Tannery wastes including leather dust, ash, sludges and flours

Tyres

Wool scouring wastes

Part 3 Characteristics of trackable wastes

Dangerous Goods Class (UN Class)	UN Code	
		Explosive
1	H1	An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
		Flammable Liquids
3	H3	The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc but not including substances or wastes) which give off flammable vapour at temperatures of not more than 60.5 degrees Celsius, closed-cup test, of not more than 65.6 degree Celsius, open-cup test.
		Flammable solids
4.1	H4.1	Solids or waste solids which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
		Substances or wastes liable to spontaneous combustion
4.2	H4.2	Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up in contact with air, and being liable to catch fire.
		Substances or wastes which, in contact with water, emit flammable gases
4.3	H4.3	Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
		Oxidising
5.1	H5.1	Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to, the combustion of other materials.
		Organic peroxides
5.2	H5.2	Organic substances or wastes which contain the bivalent-O-O structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
		Poisonous (acute)
6.1	H6.1	Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

6.2	H6.2	<p>Infectious substances</p> <p>Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.</p>
8	H8	<p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.</p>
9	H10	<p>Liberation of toxic gases in contact with air or water</p> <p>Substances or waste which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.</p>
9	H11	<p>Toxic (delayed or chronic)</p> <p>Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.</p>
9	H12	<p>Ecotoxic</p> <p>Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.</p>
9	H13	<p>Capable of yielding another material which possesses H1-H12</p> <p>Capable by any means, after disposal, of yielding another material, eg leachate, which possesses any of the characteristics listed above.</p>
		<p>Other reasons</p> <p>Potential to have a significant adverse impact on ambient air quality.</p> <p>Potential to have significant adverse impact on ambient marine, estuarine or fresh water quality.</p>

Note—

UN Class and Code relates to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods as used in Australia.

Schedule 2 Amendment of **Protection of the Environment Operations (Penalty Notices) Regulation 2004**

(Clause 55)

[1] Schedule 1 Penalty notice offences

Insert “(as prescribed by clause 54 of the **Protection of the Environment Operations (Waste) Regulation 2005**)” after “**Protection of the Environment Operations (Waste) Regulation 1996**”.

[2] Schedule 1

Omit all the matter relating to the *Protection of the Environment Operations (Waste) Regulation 1996*.

Insert instead:

Protection of the Environment Operations (Waste) Regulation 2005

Column 1	Column 2	Column 3
Provision of Regulation	Officer	Penalty
Clause 6 (5)	2A	\$500
Clause 10 (2)	2A	\$500
Clause 10 (3) (a)	2A	\$500
Clause 10 (3) (b)	2A	\$500
Clause 11 (7)	2A	\$500
Clause 12 (1)	2A	\$500
Clause 12 (2)	2A	\$500
Clause 12 (3)	2A	\$500
Clause 13	2A	\$500
Clause 14 (1)	2A	\$500
Clause 14 (2)	2A	\$500
Clause 15 (1)	2A	\$500
Clause 15 (2)	2A	\$500
Clause 16 (3)	2A	\$500
Clause 22 (1)	2A	\$500
Clause 22 (2)	2A	\$500
Clause 22 (3)	2A	\$500
Clause 23	2A	\$500
Clause 24 (1)	2A	\$500
Clause 24 (2)	2A	\$500
Clause 24 (3)	2A	\$500
Clause 24 (4)	2A	\$500

Clause 24 (6)	2A	\$500
Clause 25 (1)	2A	\$500
Clause 25 (3)	2A	\$500
Clause 25 (4)	2A	\$500
Clause 25 (5)	2A	\$500
Clause 25 (6)	2A	\$500
Clause 26 (2)	2A	\$500
Clause 27 (4)	2A	\$500
Clause 27 (5)	2A	\$500
Clause 28 (5)	2A	\$500
Clause 29 (4)	2A	\$500
Clause 32	2A	\$500
Clause 33	2A	\$500
Clause 34	2A	\$500
Clause 35	2A	\$500
Clause 36	2A	\$500
Clause 40 (1)	2A	\$500
Clause 40 (2)	2A	\$500
Clause 42 (2)	1, 2	\$500
Clause 42 (6)	1, 2	\$500
Clause 43	1, 2	\$500
Clause 45 (1)	1, 2	\$750
Clause 47 (3)	2A	\$500
Clause 47 (4)	1, 2	\$500
Clause 47 (5)	2A	\$500
Clause 48	1, 2	\$500
Clause 49	1,2	\$500
Clause 50 (11)	2A	\$500
Clause 51 (10)	2A	\$500

Clause 52	1, 2	\$500
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