

Protection of the Environment Operations (Waste) Regulation 2005

[2005-497]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Protection of the Environment Operations \(Waste\) Amendment \(Australian Packaging Covenant\) Regulation 2011 \(151\)](#) (LW 3.3.2011), Sch 1 [17] (not commenced — to commence on 1.7.2011)

Authorisation

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New South Wales

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This Regulation replaces the *Protection of the Environment Operations (Waste) Regulation 1996* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

3A Additional substances prescribed as waste

For the purposes of paragraph (e) of the definition of **waste** in the Dictionary to the Act, a substance is prescribed as waste if the substance:

- (a) is not otherwise included as waste within the meaning of the Act, and
- (b) is reasonably capable of being applied to land at a scheduled waste facility, and
- (c) is received by a waste facility to which section 88 of the Act applies.

3B Definition of “waste”

(1) For the purposes of paragraph (d) of the definition of **waste** in the Dictionary to the Act, the following circumstances are prescribed:

- (a) in relation to substances that are applied to land, the application to land by:
 - (i) spraying, spreading or depositing on the land, or
 - (ii) ploughing, injecting or mixing into the land, or
 - (iii) filling, raising, reclaiming or contouring the land,
- (b) in relation to substances that are used as fuel, all circumstances.

(2) Subclause (1) (a) does not apply where the substances concerned are either bulk agricultural crop materials or manure.

Part 2 Contributions by occupiers of scheduled waste facilities and monitoring requirements

4 Definitions

(1) In this Part:

coal washery rejects means the waste resulting from washing coal (including substances such as coal fines, soil, sand and rock resulting from that process).

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

ERA means extended regulated area, being the area comprising the local government areas of Cessnock, Gosford, Hawkesbury, Kiama, Lake Macquarie, Maitland, Newcastle, Port Stephens, Shellharbour, Shoalhaven, Wingecarribee, Wollongong and Wyong.

liquid waste has the same meaning as it has in Schedule 1 to the Act.

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 and Spatial Information Act 2002*, or
- (b) such other class of surveyor as the EPA may approve.

RRA means the regional regulated area, being the local government areas of Ballina, Bellingen, Blue Mountains City, Byron, Clarence Valley, Coffs Harbour City, Dungog, Gloucester, Great Lakes, Greater Taree City, Kempsey, Kyogle, Lismore City, Muswellbrook, Nambucca, Port Macquarie-Hastings, Richmond Valley, Singleton, Tweed, Upper Hunter Shire and Wollondilly.

scheduled waste facility means a waste facility that is required to be licensed under the Act because it is used for the storage, treatment, processing, sorting or disposal of waste.

SMA means Sydney metropolitan area, being the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby and Woollahra.

trackable liquid waste means liquid waste of a type described in Part 1 of Schedule 1.

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

- (2) For the purposes of this Part, and despite clause 6 (6), one kilolitre of trackable liquid waste is taken to be the equivalent of one tonne of that waste.

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 56 days after the end of each month is prescribed as the time within which the contribution payable by an occupier is to be paid in respect of waste other than trackable liquid waste.
- (3) For the purposes of section 88 (3) (b) of the Act, the period of 28 days after the end of each 3 month period (being the 3 month periods ending on 31 August, 30 November, the last day of February and 31 May in each year) is prescribed as the time within which the contribution payable by an occupier is to be paid in respect of trackable liquid waste.
- (4) For the purposes of section 88 (3) (b) of the Act, and despite subclauses (2) and (3), the period of 26 days after the end of each month is prescribed as the time within which the contribution payable by an occupier under clause 5 (4) 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 in respect of waste other than trackable liquid waste:
- (a) 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 SMA, or
 - (ii) that is received in that year at a scheduled waste facility located in the ERA but that has been generated in the SMA, or
 - (iii) that is received in that year at a scheduled waste facility located outside the SMA and the ERA but that has been generated in, or generated from waste (including liquid waste) generated 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 but that has been generated outside the SMA, or
 - (ii) that is received in that year at a scheduled waste facility located outside the SMA and the ERA but that has been generated in, or generated from waste (including liquid waste) generated in, the ERA,
 - (c) the RRA 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 RRA but that has been generated outside the SMA and the ERA, or
 - (ii) that is received in that year at a scheduled waste facility located outside the SMA and the ERA but that has been generated in, or generated from waste (including liquid waste) generated in, the RRA.
- (2) For the purposes of section 88 (2) of the Act, the contributions required to be paid by an occupier of a scheduled waste facility in respect of trackable liquid waste that is received at the scheduled waste facility are prescribed as:
 - (a) \$38.60 for each tonne of the waste that is received in the period beginning on 1 October 2007 and ending on 30 June 2008, or
 - (b) for a year beginning on or after 1 July 2008, the TLW amount for that year for each tonne of the waste that is received in that year.
- (3) For the purposes of section 88 (5) of the Act, an occupier of a scheduled waste facility is exempt from the requirement to pay contributions in respect of trackable liquid waste that is received at the scheduled waste facility before 1 October 2007.
- (4) For the purposes of section 88 (2) of the Act, the contributions required to be paid by an occupier of a scheduled waste facility used to dispose of coal washery rejects only, in respect of each tonne of coal washery rejects received at the facility, are prescribed as:
 - (a) \$15.00 for each tonne of coal washery rejects received in the period beginning on 1 November 2009 and ending on 30 June 2010, or
 - (b) for a year beginning on or after 1 July 2010, the Special Levy amount for that year for each tonne of coal washery rejects received in that year.
- (5) An occupier of a scheduled waste facility who is required to pay contributions under subclause (4) is not required to pay contributions in respect of the same waste under subclause (1).
- (6) The SMA amount is as follows:
 - (a) \$30.40 for the year ending 30 June 2007,
 - (b) for a year beginning on or after 1 July 2007 and ending on or before 30 June 2016—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (11),
 - (c) for a year beginning on or after 1 July 2016—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (15).

(7) The ERA amount is as follows:

- (a) \$23.10 for the year ending 30 June 2007,
- (b) for a year beginning on or after 1 July 2007 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 (12),
- (c) for a year beginning on or after 1 July 2013—the SMA amount for that year.

(8) The RRA amount is as follows:

- (a) \$10.00 for the year ending on 30 June 2010,
- (b) for a year beginning on or after 1 July 2010 and ending on or before 30 June 2016—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (13),
- (c) for a year beginning on or after 1 July 2016—the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (15), but where **T** in that formula is the RRA amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

(9) The TLW amount is as follows:

- (a) \$46.70 for the year ending 30 June 2009,
- (b) for a year beginning on or after 1 July 2009 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 (14),
- (c) 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 (15), but where **T** in that formula is the TLW amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

(10) The Special Levy amount is the amount, in dollars and cents, calculated for the year in accordance with the formula in subclause (15), but where T in that formula is:

- (a) for a calculation made for the year ending on 30 June 2011—\$15.00, or
- (b) for a calculation made for a year beginning on or after 1 July 2011—the Special Levy amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

(11) The formula is:

$$D = (N + Q) \times \left(1 + \left(\frac{A - B}{B} \right) \right)$$

where:

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

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

Q is:

- (a) for a calculation made for a year ending on or before 30 June 2009—\$7.00, or
- (b) for a calculation made for a year beginning on or after 1 July 2009 and ending on or before 30 June 2016—\$10.00.

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.

(12) 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 2009—\$7.50, or
- (b) for a calculation made for the year ending on 30 June 2010—\$10.50, or
- (c) for a calculation made for a year beginning on or after 1 July 2010 and ending on or before 30 June 2013—\$11.50.

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.

(13) The formula is:

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

where:

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

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

T is \$10.00.

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.

(14) 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 TLW 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 the year ending on 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.

(15) 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.

(16) The SMA amount, the ERA amount, the RRA amount, the TLW amount and the Special Levy amount are to be rounded to the nearest 10 cents, and if the amount to be rounded is 5 cents, rounded up.

(17) The amount of the contribution is to be adjusted in accordance with clause 11A.

(18) 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

(1A) This clause does not apply to or in respect of liquid waste other than trackable liquid waste.

(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) Except as provided by subclauses (2A)-(2C), the contribution payable is the SMA amount calculated:

(a) in accordance with clause 5 (6) for the year in which the EPA makes the determination of the amount of the contribution, and

(b) in relation to each tonne of the waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is made.

(2A) The contribution payable in respect of waste the subject of clause 5 (1) (c) is the RRA amount calculated:

(a) in accordance with clause 5 (8) for the year in which the EPA makes the determination of the amount of the contribution, and

(b) in relation to each tonne of the waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is

made.

(2B) The contribution payable in respect of waste the subject of clause 5 (2) is:

- (a) if the EPA makes the determination of the amount of the contribution in the period beginning 1 October 2007 and ending on 30 June 2008, \$38.60 in relation to each tonne of the waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is made, or
- (b) otherwise, the TLW amount calculated:
 - (i) in accordance with clause 5 (9) for the year in which the EPA makes the determination of the amount of the contribution, and
 - (ii) in relation to each tonne of the waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is made.

(2C) The contribution payable in respect of waste the subject of clause 5 (4) is:

- (a) if the EPA makes the determination of the amount of the contribution in the period beginning 1 November 2009 and ending on 30 June 2010, \$15.00 in relation to each tonne of the waste that is estimated by the EPA under subclause (3) as being at the waste facility concerned when the estimation is made, or
- (b) otherwise, the Special Levy amount calculated:
 - (i) in accordance with clause 5 (10) for the year in which the EPA makes the determination of the amount of the contribution, and
 - (ii) in relation to each tonne of the 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) in respect of waste other than liquid waste, 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, but only in respect of waste other than trackable liquid waste:

- (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 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) trackable liquid waste that does not have any of the characteristics set out in Part 3 of Schedule 1,
 - (a1), (b) (Repealed)
 - (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 or land application purpose

(1A) This clause does not apply to or in respect of trackable liquid waste.

- (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.
- (6) This clause applies in relation to a land application purpose in the same way as it applies in relation to an operational purpose, and so applies as if a reference in this clause (other than this subclause) to an operational purpose were a reference to a land application 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 (other than trackable liquid 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 (other than trackable liquid waste) received by the occupier that the occupier has transported to another place as referred to in subclause (3) (**transported waste deduction**), or

(b1) an amount in respect of trackable liquid waste received by the occupier that the occupier has transported to another place as referred to in subclause (3AA) (**transported trackable liquid waste deduction**), or

(c) an amount in respect of waste (other than trackable liquid waste) referred to in clause 3A received by the occupier that has been or is to be used for an approved land application purpose by the occupier (**approved land application purpose 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.

(3AAA) Subclause (3) does not operate in respect of any type of waste specified in the guidelines (if any) published or approved by the EPA from time to time for the purposes of this subclause.

(3AA) **Transported trackable liquid waste deductions** A transported trackable liquid waste deduction is available to the occupier of a scheduled waste facility in respect of trackable liquid waste received at the facility on or after 1 October 2007 that is transported:

(a) to another facility as waste (other than trackable liquid waste) and is disposed of

at a scheduled waste facility within the regulated area, in accordance with the guidelines (if any) published or approved by the EPA from time to time for the purposes of this paragraph, or

- (b) as a substance (other than trackable liquid waste) to a place that can lawfully receive it for recycling, reuse or processing but only if guidelines have been published or approved by the EPA for the purposes of this paragraph and all the requirements of those guidelines have been satisfied, or
- (c) as trackable liquid waste to a facility that is authorised to receive it, in accordance with the guidelines (if any) published or approved by the EPA from time to time for the purposes of this paragraph.

(3A) Approved land application purpose deductions For the purposes of subclause (1) (c), waste has been or is to be used for an approved land application purpose at a waste facility if:

- (a) a certificate has been issued under clause 11 in respect of the land application purpose, and
- (b) the waste has been or is to be used in accordance with the requirements (if any) specified in the certificate pursuant to clause 11 (5), and
- (c) the waste falls within any of the following subparagraphs:
 - (i) it is new asphalt or concrete, obtained from a batching plant that is used at the facility for roads or other construction works,
 - (ii) it is any one or more of the following substances that is used at the facility for leachate collection systems associated with leachate management in accordance with the conditions of an environment protection licence:
 - (A) geonets,
 - (B) geotextiles,
 - (C) drainage layer media (having a thickness not greater than 300 mm) placed over landfill base liners,
 - (D) piping,
 - (E) electrical equipment,
 - (F) any other machinery,
 - (iii) it is any one or more of the following substances that is used at the facility for landfill lining systems (including landfill cell bases and sides) or associated stormwater management systems in accordance with the conditions of an environment protection licence:

- (A) geomembranes,
 - (B) geotextiles,
 - (C) clay liners (having a thickness not greater than 900 mm),
 - (D) piping,
- (iv) it is any one or more of the following substances that is used at the facility for landfill gas collection systems associated with landfill gas management in accordance with the conditions of an environment protection licence:
- (A) drainage gravels (not exceeding the minimum amount required in any applicable licence),
 - (B) piping,
 - (C) electrical equipment,
 - (D) any other machinery,
- (v) it is plastic sheeting that is used at the facility as a daily cover for waste.
- (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).
- (5A) An approved land application 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 (if any) 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 in respect of the waste 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 this clause 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

- (1A) This clause does not apply to or in respect of liquid waste other than trackable liquid waste.
- (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 or a land application purpose at a scheduled waste facility** For all waste used at a scheduled waste facility for an operational purpose or a land application purpose, the occupier of the facility is required to record the following information:
- (a) the nature of the operational purpose or land application 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 or a land application 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 except in relation to trackable liquid waste, where the occupier is only required to record the information set out in paragraph (b):

- (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 of each year and, in respect of waste other than trackable liquid waste (including material mixed with that trackable liquid waste), as at 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 are:
- (a) kept in accordance with the guidelines (if any) published by the EPA, from time to time, for the purposes of this subclause, and
 - (b) in the case of records relating to trackable liquid waste, provided to the EPA electronically at such times in a form and manner approved by the EPA.
- (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.
- (9) **Exemptions relating to record keeping requirements** The EPA may from time to time grant an exemption under clause 51 from the requirements of this clause to an occupier of a scheduled waste facility to whom the requirement to pay a contribution to the EPA under section 88 of the Act does not apply.

13 Waste contribution monthly reports

- (1) 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 56 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.
- (2) This clause does not apply to or in respect of liquid waste.

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 (other than liquid waste) per year, ensure that there is an approved weighbridge installed at the waste facility, and
- (b) on and from 1 September 2006 until 30 June 2011, if the waste facility receives over 10,000 tonnes of waste (other than liquid waste) in any year, ensure that there is an approved weighbridge installed at the waste facility, and
- (c) on and from 1 July 2011, if the waste facility receives over 5,000 tonnes of waste (other than liquid waste) in any 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 *National Measurement Act 1960* of the Commonwealth, 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.
- (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 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, disposal, re-use or recycling 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: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (3) The requirements relating to the transportation of asbestos waste are as follows:
 - (a) bonded asbestos material must be securely packaged at all times,
 - (b) friable asbestos material must be kept in a sealed container,
 - (c) asbestos-contaminated soils must be wetted down,
 - (d) all asbestos waste must be transported in a covered, leak-proof vehicle.
- (4) The requirements relating to the off site 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) when asbestos waste is delivered to a landfill site, the occupier of the landfill site must be informed by the person delivering the waste that the waste contains asbestos,
 - (c) when unloading and disposing of asbestos waste at a landfill site, the waste must

be unloaded and disposed of in such a manner as to prevent the generation of dust or the stirring up of dust,

(d) asbestos waste disposed of at a landfill site must be covered with virgin excavated natural material or other material as approved in the facility's environment protection licence:

(i) initially (at the time of disposal), to a depth of at least 0.15 metre, and

(ii) at the end of each day's operation, to a depth of at least 0.5 metre, and

(iii) finally, to a depth of at least 1 metre (in the case of bonded asbestos waste or asbestos-contaminated soils) or 3 metres (in the case of friable asbestos material) beneath the final land surface of the landfill site.

(5) A person must not cause or permit asbestos waste in any form to be re-used or recycled.

(6) In this clause:

bonded asbestos material means any material (other than friable asbestos material) that contains asbestos.

friable asbestos material means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.

43 Special requirements relating to clinical and related waste

(1) If a person disposes of clinical and related waste at a waste facility that is a landfill site or application site and 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 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 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 kilograms at any 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: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (2) If a person collects waste for disposal at a waste facility that is a landfill site (being waste that the person knows, or ought reasonably to know, to include clinical and related waste), the person must comply with the following requirements:
- (a) sharps waste must, as far as is practicable, be collected and separately stored from other waste in securely packaged containers that satisfy the requirements of the relevant Australian Standards (for example, in sharps disposal bins),
 - (b) waste contaminated with sharps waste must be packaged securely at all times (that is, where sharps are unintentionally mixed with other wastes, and it is not practicable to separate the sharps, then all the waste must be securely packaged as if it were all sharps waste),
 - (c) waste contaminated with sharps waste must comply with the packaging and disposal requirements of both sharps waste and any waste that it is contaminating (for example, sharps waste mixed with cytotoxic waste must meet the standards for packaging and disposal of both wastes),
 - (d) clinical waste, cytotoxic waste and pharmaceutical, drug or medicine waste must each be packaged securely and appropriately labelled or placed in containers designed especially for its containment.

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

- (3) The occupier of a hospital, day procedure centre, pathology laboratory, mortuary or medical research facility where clinical and related waste is generated:
- (a) must develop a clinical and related waste management plan in accordance with the *NSW Health: Waste Management Guidelines for Health Care Facilities* (as in force from time to time), and
 - (b) must designate an appropriate person or persons responsible for implementing and monitoring the clinical and related waste management plan, and
 - (c) must keep the clinical and related waste management plan up to date, retained on the premises and available for inspection by the appropriate regulatory authority.

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

the case of an individual.

- (4) It is a condition of a licence that authorises the transportation of clinical and related waste that the following requirements are complied with:
- (a) during transportation, the waste must be placed in rigid containers that are leak proof, shatter proof and washable and have securely fitting lids to prevent spills,
 - (b) during transportation, the waste must be packaged and labelled in accordance with the requirements set out in the document called *Waste Management Guidelines for Health Care Facilities* issued by the Department of Health, as in force from time to time,
 - (c) the waste must not be transported in a vehicle having a waste compaction system,
 - (d) a spill kit must be carried in any vehicle transporting the waste that conforms with the requirements set out in the document called *Waste Management Guidelines for Health Care Facilities* issued by the Department of Health, as in force from time to time,
 - (e) when the waste is in the vehicle and the vehicle is unattended, the vehicle must be securely locked and (except where the vehicle is a railway vehicle) parked in a secure, undercover area.

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 or restricted solid 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 and sustainability improvement scheme

46A Definitions

In this Part:

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

ERA has the same meaning as in Part 2.

RRA has the same meaning as in Part 2.

SMA has the same meaning as in Part 2.

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

waste and sustainability improvement payment means a waste and sustainability improvement payment under this Part.

year has the same meaning as in Part 2.

46B Waste and sustainability improvement guidelines

- (1) The EPA may, from time to time, issue guidelines establishing waste and sustainability improvement standards to be met by local councils within the regulated area in relation to the use, recovery, recycling, processing and disposal of waste, and improvements in environmental sustainability practices and services.
- (1A) A waste and sustainability improvement standard may be expressed to apply to all local councils, or to a particular local council or group of local councils, within the regulated area.
- (2) The EPA may from time to time amend, revoke or replace the waste and sustainability improvement guidelines.
- (3) The waste and sustainability 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 and sustainability improvement guidelines and this Regulation, the latter is to prevail.

46C Application for waste and sustainability improvement payments

- (1) From the year commencing 1 July 2006, a local council within the SMA or the ERA, and from the year commencing 1 July 2009, a local council within the RRA, may each year apply to the EPA for a waste and sustainability improvement payment in relation to its compliance with the waste and sustainability improvement guidelines.
- (2) An application under this clause:
 - (a) must be made in such manner and form as is prescribed by the waste and sustainability improvement guidelines, and
 - (b) must be accompanied by such evidence as is required by the waste and sustainability 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 and sustainability 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 and sustainability improvement guidelines.

46E Calculation of amount of waste performance improvement payment

- (1) The amount of the waste and sustainability improvement payment to which an eligible council is entitled in a year beginning on or after 1 July 2006 and ending on or before 30 June 2009 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 SMA and the ERA (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.

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 SMA and the ERA.

- (1A) The amount of the waste and sustainability improvement payment to which an eligible council is entitled in a year beginning on or after 1 July 2009 and ending on or before 30 June 2016 is to be calculated in accordance with the following formula:

$$F = R \times \left(\frac{P}{T}\right)$$

where:

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

R is:

- (a) for the year ending 30 June 2010—\$19.8 million (if the payment is for a council within the SMA or the ERA) or \$1.4 million (if the payment is for a council within the RRA), or
- (b) for the year ending 30 June 2011—\$26.6 million (if the payment is for a council within the SMA or the ERA) or \$2.8 million (if the payment is for a council within the RRA), or
- (c) for the year ending 30 June 2012—\$32.8 million (if the payment is for a council within the SMA or the ERA) or \$2 million (if the payment is for a council within the RRA), or
- (d) for the year ending 30 June 2013—\$36.2 million (if the payment is for a council within the SMA or the ERA) or \$2.5 million (if the payment is for a council within the RRA), or
- (e) for the year ending 30 June 2014—\$38.8 million (if the payment is for a council within the SMA or the ERA) or \$3 million (if the payment is for a council within the RRA), or
- (f) for the year ending 30 June 2015—\$40.5 million (if the payment is for a council within the SMA or the ERA) or \$3.5 million (if the payment is for a council within the RRA), or
- (g) for the year ending 30 June 2016—\$42.6 million (if the payment is for a council within the SMA or the ERA) or \$3.9 million (if the payment is for a council within the RRA).

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 SMA and the ERA (if the payment is for a council within the SMA or the ERA) or within the RRA (if the payment is for a council within the RRA).

- (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 and sustainability improvement payment

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

Part 5B Recycling of consumer packaging

46G Definitions

(1) In this Part:

Australian Packaging Covenant means the Australian Packaging Covenant of 1 July 2010 (including its annexures and schedules), as amended from time to time.

brand owner has the meaning given by clause 46H.

person's packaging means all packaging made of any material, or combination of materials, for the containment, protection, marketing and handling of those items of the product in respect of which the person is the brand owner, including any packaging materials used to transport those items of the product to a retailer, but does not include packaging provided by a retailer to a consumer for the transportation of products from the retailer.

recover means, in relation to materials, to separate those materials from the waste stream in a manner that enables them to be re-used for packaging or used for other products.

Sustainable Packaging Guidelines means the guidelines of that title contained in Schedule 2 to the Australian Packaging Covenant.

turnover means gross annual income.

waste action plan has the meaning given by clause 46L.

(2) A reference in this Part:

(a) to the Australian Packaging Covenant is taken to include a reference to the targets for signatories to the Covenant that are specified in the Australian Packaging Covenant Council's current strategic plan (as referred to in the Covenant), as amended from time to time, and

(b) to the Sustainable Packaging Guidelines, in relation to a person to whom this Part applies, is taken to include a reference to an alternative set of guidelines that the EPA:

(i) is satisfied will achieve outcomes equivalent to those achieved by the Sustainable Packaging Guidelines, and

(ii) has approved of in writing for adoption by the person for the purposes of this Part.

46H Brand owners of products

(1) For the purposes of this Part, a person is the **brand owner** of a product if the person is the owner of the product name under which the product is sold or otherwise distributed in Australia.

- (2) If there is no person who satisfies subclause (1) in Australia, each person who is a licensee of the product name under which the product is sold or otherwise distributed in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed under that licence.
- (3) If there is no person who satisfies subclause (1) or (2) in Australia, each person who is a franchisee under a business arrangement that allows the person to sell or otherwise distribute the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed by the person under that arrangement.
- (4) If there is no person who satisfies subclause (1), (2) or (3) in Australia, the person who first sells a particular item of the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of that item.
- (5) In this clause:
product name includes a trade mark, brand name or trade name whether registered in Australia or not.

46I Application of Part

- (1) This Part applies to brand owners of products.
- (2) This Part also applies to a retailer who provides plastic bags to consumers for the transportation of products from the retailer and, for the purposes of this Part, those plastic bags are taken to be packaging for products for which the retailer is the brand owner, whether or not the retailer is a brand owner of any product or item of a product.
- (3) Despite subclauses (1) and (2), this Part does not apply to:
 - (a) a person who is a signatory to, and complying with:
 - (i) the Australian Packaging Covenant (or any arrangement that replaces the Australian Packaging Covenant), or
 - (ii) any other arrangement approved by the EPA by order published in the Gazette, being an arrangement that the EPA is satisfied will produce equivalent outcomes to the Australian Packaging Covenant, or
 - (b) a person who has a turnover in Australia of less than \$5 million.
- (4) For the purposes of subclause (3) (a), a person is taken not to be complying with the Australian Packaging Covenant if the person is a signatory to the Covenant and a non-compliance notice is sent to the person under Schedule 3 to the Covenant.

46J EPA is to set targets for recovery of materials and review of packaging design

- (1) The EPA is, by order published in the Gazette, to set targets for the following:
 - (a) recovery of material used in packaging products (whether in relation to all or to particular material so used),
 - (b) review of packaging design.
- (2) In setting any such target the EPA is to have regard to current national performance and the targets set out in the Australian Packaging Covenant.
- (3) Without limiting subclause (1) (a), any such target may be expressed in the form of a percentage of the materials used.

Editorial note—

For orders under this clause see Gazette No 120 of 29.9.2006, p 8536.

46K Persons must recover, re-use and recycle waste materials etc and review packaging design in accordance with targets

- (1) A person to whom this Part applies must ensure:
 - (a) that the waste materials used in the person's packaging are recovered in accordance with the targets set by the EPA under clause 46J (1) (a), and
 - (b) that after being recovered those materials are:
 - (i) re-used or recycled by the person, or
 - (ii) if that is not practicable, re-used or recycled within Australia, or
 - (iii) if that is not practicable, re-used or recycled overseas, and
 - (c) that consumers are given adequate information to enable them to deal with the materials used in the person's packaging once they are no longer needed by the consumer, including information on where to take the materials and how to re-use or recycle them, and
 - (d) that review of a person's packaging design is in accordance with the targets set by the EPA under clause 46J (1) (b).

Maximum penalty:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

- (2) The requirement in subclause (1) (a) to recover materials used in a person's packaging is satisfied if an equivalent amount of the same material is recovered by, or on behalf of, the person from packaging that is substantially similar to the person's packaging.

46L Persons must prepare waste action plan

- (1) A person to whom this Part applies must prepare a plan (a **waste action plan**) in accordance with this clause and submit the plan to the EPA within one month of being notified by the EPA in writing of the person's obligation to do so.
- (2) A waste action plan is to set out:
- (a) a "baseline" of data setting out the person's current performance in respect of the use, recovery, re-use and recycling of the materials used in the person's packaging, and
 - (b) how the person will ensure compliance with clause 46K, including:
 - (i) targets for the recovery of the waste materials used in the person's packaging and for reviewing the person's packaging design, and
 - (ii) time frames, proposed actions and performance indicators for achieving those targets, and
 - (c) how the person will ensure a continuous reduction in the number of packaging items in the litter stream.
- (3) A waste action plan takes effect when it is submitted to the EPA.
- (4) A waste action plan is to be in the form, and is to contain any matter or particular in relation to the use, recovery, re-use or recycling of the materials used in the person's packaging, the review of the person's packaging design, or reduction in packaging litter, as may be specified by the EPA by notice in writing to the person.
- (5) The EPA may direct a person to amend a waste action plan if the EPA reasonably believes that the plan is not sufficient to ensure that the person complies with clause 46K or subclause (2) (c).
- (6) A person must comply with a direction of the EPA given in accordance with subclause (5).
- (7) To the extent that a waste action plan relates to a person's obligations under clause 46K, a failure to comply with a waste action plan is evidence of a failure to comply with clause 46K.

Maximum penalty (subclauses (1) and (6)):

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing

offence, a further penalty of 100 penalty units for each day the offence continues, or

- (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

46M Record keeping

- (1) A person to whom this Part applies must keep records that set out the following:
- (a) the amount of each material used in the person's packaging,
 - (b) the arrangements that are in place to ensure that those materials are recovered, including details of any agreement with a third party for the recovery of those materials,
 - (c) the amounts of each material that is recovered and how any recovered material is used.
- (2) Records must be retained by the person for a period of at least 5 years following the annual reporting period to which they relate.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

Part 6 Miscellaneous

47 Reporting requirements for non-paying landfills

- (1) This clause applies to any landfill site that is not required to pay contributions under section 88 of 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:

- (a1) the transportation of waste must be carried out in a manner that avoids the spillage of the waste,
- (a) any vehicle or plant 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,
- (f) liquid waste must not be mixed with other waste,
- (g) the waste must be able to be sampled by the release of suitable and accessible valves located on the top and, where appropriate, bottom of any container used to transport

the waste,

- (h) the following must be carried in the vehicle transporting the waste:
 - (i) a copy of any environment protection licence required to authorise the transport of the waste,
 - (ii) HB 76—2004: *Dangerous Goods—Initial Emergency Response Guide*, published by Standards Australia (***the Standards Australia Guide***) or a document setting out procedures to be followed in an emergency and containing all information from the Standards Australia Guide that relates to the type of waste being transported,
 - (iii) a spill kit that is appropriate for the type of waste being transported.

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

49A Condition of licence for trackable waste

It is a condition of a licence that authorises the transport of trackable waste that clause 49 (f) is complied with.

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 any provision of the Act or 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.

51A Exemptions relating to certain waste

- (1) This clause applies to:
 - (a) waste that is waste by virtue of paragraph (d) of the definition of **waste** in the Dictionary to the Act, and
 - (b) any other waste that is used in connection with a process of thermal treatment, and
 - (c) coal washery rejects (within the meaning of Part 2).
- (2) The EPA may from time to time grant an exemption under clause 51 that exempts a person or class of persons from any one or more of the following provisions in relation to an activity or class of activities relating to waste to which this clause applies:
 - (a) the provisions of sections 47–49 and 88 of the Act,
 - (b) the provisions of Schedule 1 to the Act, either in total or as they apply to a particular type of activity,
 - (c) the provisions of Part 3 and clauses 45 and 47 of this Regulation.

51B Exemptions relating to transportation of waste

The EPA may from time to time grant an exemption under clause 51 to a person or a class of persons from the requirements of:

- (a) clause 43 (4), or
- (b) clauses 49 (f) and 49A.

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.
- (5) A waste action plan submitted to the EPA under clause 46L as in force immediately before its amendment by the *Protection of the Environment Operations (Waste) Amendment (Australian Packaging Covenant) Regulation 2011* continues in effect as a waste action plan for the purposes of Part 5B despite that amendment and,

accordingly, may be the subject of a direction under clause 46L (5).

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
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		<p>Explosive</p> <p>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.</p>
1	H1	
		<p>Flammable Liquids</p> <p>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.</p>
3	H3	
		<p>Flammable solids</p> <p>Solids or waste solids which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.</p>
4.1	H4.1	
		<p>Substances or wastes liable to spontaneous combustion</p> <p>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.</p>
4.2	H4.2	
		<p>Substances or wastes which, in contact with water, emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.</p>
4.3	H4.3	

		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.
		Infectious substances
6.2	H6.2	Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.
		Corrosives
8	H8	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.
		Liberation of toxic gases in contact with air or water
9	H10	Substances or waste which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.
		Toxic (delayed or chronic)
9	H11	Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
		Ecotoxic
9	H12	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.
		Capable of yielding another material which possesses H1-H12
9	H13	Capable by any means, after disposal, of yielding another material, eg leachate, which possesses any of the characteristics listed above.
		Other reasons
		Potential to have a significant adverse impact on ambient air quality.
		Potential to have significant adverse impact on ambient marine, estuarine or fresh water quality.

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