

Protection of the Environment Operations (Waste) Regulation 2014

[2014-666]



New South Wales

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New South Wales

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Protection of the Environment Operations (Waste) Regulation 2014



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Regulation 2014*.

2 Commencement

- (1) Except as otherwise provided by this clause, this Regulation commences on 1 November 2014 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Protection of the Environment Operations (Waste) Regulation 2005*, which would otherwise be repealed on 1 September 2015 by section 10(2) of the *Subordinate Legislation Act 1989*.

- (2) Part 5 commences on 1 March 2015.
- (3) Clauses 76 and 79 commence on 1 July 2015.

3 Interpretation

- (1) In this Regulation—

approved means approved by the EPA from time to time.

category 1 trackable waste means waste of a type described in Part 1 of Schedule 1 that exhibits any of the characteristics specified in Part 3 of that Schedule.

category 2 trackable waste means waste of a type described in Part 2 of Schedule 1 that exhibits any of the characteristics specified in Part 3 of that Schedule.

metropolitan levy area or **MLA** means the local government areas of Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Central Coast, City of Cessnock, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Inner West, Kiama, Ku-ring-gai, City of Lake Macquarie, Lane Cove, City of Liverpool, City of Maitland, Mosman, City of

Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, Port Stephens, City of Randwick, City of Ryde, City of Shellharbour, City of Shoalhaven, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Wingecarribee, City of Wollongong and Woollahra.

resource recovery exemption means an exemption granted under clause 91 that is authorised to be granted by clause 92.

scheduled coal waste facility means a waste facility that is a scheduled waste facility only in respect of the disposal of coal washery rejects.

scheduled waste disposal facility means a waste facility that is required to be licensed under the Act because it is used for the disposal of waste.

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.

the Act means the [Protection of the Environment Operations Act 1997](#).

trackable liquid waste—see clause 4.

Waste Levy Guidelines means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).

Note—

A copy of the guidelines is available on the EPA’s website (www.epa.nsw.gov.au).

Note—

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

4 Meaning of “trackable liquid waste”

- (1) For the purposes of this Regulation, **trackable liquid waste** means liquid waste that is category 1 trackable waste.
- (2) However, liquid waste is not trackable liquid waste for the purposes of this Regulation if Part 4 of this Regulation does not apply to the transportation of that waste because of the operation of clause 41(2) or an exemption granted under Part 9.

5 Liquid waste—conversion of volume to weight (cf clause 4(2) of 2005 Reg)

For the purposes of Parts 2 and 3—

- (a) one kilolitre of trackable liquid waste is taken to weigh one tonne, and
- (b) other liquid waste is taken to weigh the amount calculated in accordance with a relevant method specified in the Waste Levy Guidelines.

6 Definition of “waste”—prescribed circumstances and substances (cf clauses 3A and 3B of 2005 Reg)

(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) For the purposes of paragraph (e) of the definition of **waste** in the Dictionary to the Act, the following substances are prescribed to be waste—

- (a) any substance that is received by a scheduled waste facility (other than any office supplies, or any plant or vehicles, used or intended to be used at the facility) if the occupier of the facility is required to pay contributions to the EPA under section 88 of the Act and the substance is reasonably capable of being applied to land at the facility 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, and
- (b) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is intended to be applied 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, and
- (c) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is intended to be used as fuel.

Part 2 Contributions by occupiers of scheduled waste facilities

Note—

Section 88 of the Act provides that the occupier of a waste facility that is required to have an environment protection licence must pay a contribution to the EPA in respect of all waste received at the facility. This Part sets out how that contribution is to be determined. Division 3 provides how the contribution is to be calculated. Division 4 sets out deductions that may be made from any such contribution and Division 2 sets out how and when the contribution is to be paid. Division 5 sets out some exemptions from the requirement to pay a contribution and Division 6 requires the occupier to report to the EPA on the amount of waste received in a month to ensure that the correct contribution is paid.

Division 1 Interpretation

7 Definitions (cf clause 4 of 2005 Reg)

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.

qualified surveyor means—

- (a) a person registered as a land surveyor under the [Surveying and Spatial Information Act 2002](#), or
- (b) any other person, or person belonging to a class of persons, approved by the EPA.

regional levy area or **RLA** means the local government areas of Ballina, Bellingen, City of Blue Mountains, Byron, Clarence Valley, City of Coffs Harbour, Dungog, Kempsey, Kyogle, City of Lismore, Mid-Coast, Muswellbrook, Nambucca, Port Macquarie-Hastings, Richmond Valley, Singleton, Tweed, Upper Hunter Shire and Wollondilly.

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

8 Tonnes to be rounded in calculations

- (1) For the purposes of calculating a contribution under this Part (including the amount of any deduction and the quantity of waste exempted from the calculation of a contribution under clause 21 or 21A), the tonnage of any waste is to be rounded to two decimal places (rounding 0.005 upwards).
- (2) However, if the method by which waste is authorised to be measured and recorded under Division 2 of Part 3 results in a measurement and record to two decimal places or less—
 - (a) the tonnage of waste for the purposes of calculating the contribution is the tonnage so measured and recorded, and

(b) that tonnage need not be rounded.

Division 2 How and when contributions are to be paid

9 How contributions are to be paid (cf clause 4A(1) of 2005 Reg)

For the purposes of section 88(3)(a) of the Act, a contribution payable under that section may be paid by cheque or electronic funds transfer.

10 When contributions are to be paid for trackable liquid waste (cf clause 4A(2)–(4) of 2005 Reg)

(1) (Repealed)

(2) 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.

(3) (Repealed)

10A When contributions are to be paid by disposal facilities (except for trackable liquid waste)

For the purposes of section 88(3)(b) of the Act, the occupier of a scheduled waste disposal facility must pay the contribution payable in respect of the waste (other than trackable liquid waste) received at the facility no later than 26 days after the end of the month in which the report in relation to that waste must be provided to the EPA in accordance with clause 22.

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

(1) For the purposes of section 88(3)(b) of the Act, the time within which a contribution payable by an occupier of a waste facility that is not a scheduled waste disposal facility is to be paid in respect of waste (other than trackable liquid waste) received at the facility is—

(a) 26 days after the end of the month following the month in which the waste is transported from the facility if, before the end of the 12-month period after the end of the month in which it was received—

(i) the waste is transported from the facility, or

(ii) the waste has been processed at the facility to any standards required by a resource recovery order applying, at the time that the processing is completed, to the occupier of the facility in relation to the supply of the waste,
or

- (b) 26 days after the end of the month following the month in which the waste is received if, at the end of the month in which the waste is received—
 - (i) the amount of waste at the facility (other than trackable liquid waste and waste generated at the facility, but including waste generated at the facility from waste received at the facility) exceeds the authorised amount, and
 - (ii) the waste forms part of the amount by which the authorised amount is exceeded, or
- (c) 12 months after the end of the month in which the waste is received at the facility in any other case.

(2) In this clause—

authorised amount, in relation to a waste facility, means the maximum amount of waste that may be at the facility at any one time under the terms of the environment protection licence for the facility.

resource recovery order means an order made under Part 9.

Division 3 Calculation of contributions—general

11 Determination of rate (cf clause 5(6)–(8) and (9)–(18) of 2005 Reg)

- (1) For the purposes of this Division, the **MLA amount**, **RLA amount**, **TLW amount** and **Special Levy amount** are—
 - (a) for the period commencing on 1 November 2014 and ending on 30 June 2015—\$120.90, \$65.40, \$70.10 and \$13.70, respectively, or
 - (b) for a year beginning on or after 1 July 2015—the amount, in dollars and cents, calculated for the year in accordance with the Formula (rounded to the nearest 10 cent multiple (with an amount of 5 cents to be rounded up)).

(2) 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—

- (a) if the MLA amount is being calculated—
 - (i) \$130.90 for the year beginning on 1 July 2015, or

- (ii) for a year beginning on or after 1 July 2016—the MLA amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or
- (b) if the RLA amount is being calculated—
 - (i) \$75.40 for the year beginning on 1 July 2015, or
 - (ii) for a year beginning on or after 1 July 2016—the RLA amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or
- (c) if the TLW amount is being calculated—
 - (i) \$70.10 for the year beginning on 1 July 2015, or
 - (ii) for a year beginning on or after 1 July 2016—the TLW amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or
- (d) if the Special Levy amount is being calculated—
 - (i) \$13.70 for the year beginning on 1 July 2015, or
 - (ii) for a year beginning on or after 1 July 2016—the Special Levy 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.

- (3) For the purposes of the Formula, the issue of a CPI number is to be disregarded if, at any time, the Australian Statistician issues the CPI number in substitution for a CPI number previously issued.

12 Calculation of contributions (cf clause 5(1)–(5), (8A), (8B) and (17) of 2005 Reg)

- (1) For the purposes of section 88(2) of the Act, the contributions payable by occupiers of scheduled waste facilities are the contributions calculated in accordance with this clause.
- (2) The contribution required to be paid by an occupier of a scheduled waste facility, in respect of waste (other than trackable liquid waste) received at the facility, is as follows—
 - (a) in the case of a scheduled waste facility located in the MLA—the MLA amount for

the period in which the waste is received for each tonne of waste that is received in that period,

- (b) in the case of a scheduled waste facility located outside the MLA—
- (i) the MLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated in, or generated from waste generated in, the MLA, and
 - (ii) the RLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated in, or generated from waste generated in, the RLA, and
 - (iii) the RLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated, or generated from waste generated, outside both the MLA and RLA, but only if the facility is in the RLA.
- (3) The contribution required to be paid by an occupier of a scheduled waste facility, in respect of trackable liquid waste received at the facility, is the TLW amount for the period in which the waste is received for each tonne of the waste that is received in that period.
- (4) The contribution required to be paid by an occupier of a scheduled coal waste facility, in respect of coal washery rejects received at the facility, is the Special Levy amount for the period in which the rejects are received for each tonne of rejects received in that period.
- (5) An occupier of a scheduled coal waste facility is not required to pay a contribution under subclause (2) in respect of coal washery rejects received at the facility.
- (6) The amount of the contribution calculated in accordance with this clause is to be adjusted in accordance with Division 4 (if applicable) and rounded to the nearest cent (rounding 0.5 cent upwards).
- (7) For the purposes of this clause—
- (a) the **MLA amount** or **RLA amount**, in respect of virgin excavated natural material received on or after 1 November 2014 at a scheduled waste disposal facility, is 90 per cent of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11), and
 - (b) the **MLA amount** or **RLA amount**, in respect of residual waste generated directly from the shredding of scrap metal at a relevant waste facility and received at a scheduled waste disposal facility on any of the following days is the following percentage of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11)—

- (i) between 1 September 2019 and 30 June 2020—50%,
 - (ii) between 1 July 2020 and 30 June 2021—52.5%,
 - (iii) between 1 July 2021 and 30 June 2022—57.5%,
 - (iv) between 1 July 2022 and 30 June 2023—62.5%,
 - (v) between 1 July 2023 and 30 June 2024—75%, and
- (c) the **MLA amount** or **RLA amount**, in respect of recovered fines applied to land as daily cover at a scheduled waste disposal facility, is 25 per cent of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11) if—
- (i) the recovered fines (being recovered fines meeting the requirements of *Recovered Fines Alternative Daily Cover Specifications* published by the EPA in the Gazette and as amended or replaced from time to time (the **Recovered Fines Specifications**)) are received at the facility on or after the date on which this paragraph commenced, and
 - (ii) the facility is authorised (in the environment protection licence for the facility) to receive the recovered fines and to apply the recovered fines to land as daily cover, and
 - (iii) the facility has obtained, from the scheduled waste facility that supplied the recovered fines, a statement in the approved form that certifies that the fines have been sampled and tested in accordance with the Recovered Fines Specifications and that fines comply with the Recovered Fines Specifications.
- (8) The MLA amount or RLA amount calculated under subclause (7) is to be rounded to the nearest 10 cent multiple (with an amount of 5 cents to be rounded up).
- (9) In subclause (7)(b), **relevant waste facility** means a waste facility—
- (a) at which scrap metal processing (as listed in clause 26 of Schedule 1 to the Act) is authorised to be carried out under a licence, and
 - (b) that is specified by the EPA by notice published in the Gazette (including a notice in force under subclause (7)(b) immediately before its substitution by the [Protection of the Environment Operations \(Waste\) Amendment Regulation 2019](#)).

13 Presumptions and estimates if inadequate records kept (cf clause 6 of 2005 Reg)

- (1) This clause applies in relation to the calculation of a contribution in accordance with clause 12 that is payable by the occupier of a scheduled waste facility, in respect of waste received at the facility during any period, if—
- (a) the records relating to waste received in the period are inadequate, and

(b) in the opinion of the EPA, the calculation is required to be based on presumptions about, or estimates of, any of the following matters because the records are inadequate—

- (i) whether waste was received at the facility during the period,
- (ii) when the waste was received,
- (iii) the source of the waste received,
- (iv) the amount of the waste received.

(2) The records relating to waste received at a waste facility during a period are inadequate if—

- (a) there are no records relating to waste received at the facility during the period, or
- (b) the records relating to waste received in the period are incomplete, inaccurate or inconsistent with other records (whether kept by the occupier of the waste facility concerned or another person or body), or
- (c) the information contained in the records relating to waste received in the period has not been obtained by using methods that, in the opinion of the EPA, are appropriate.

Nothing in this subclause limits the circumstances in which the records may be inadequate.

(3) The EPA is entitled to presume each of the following matters (subject to the occupier of the waste facility establishing the contrary)—

- (a) any waste at the facility at any time is waste that has been received by the facility,
- (b) the waste was received on the date on which the EPA first became aware that the records are inadequate,
- (c) any waste received by the facility has been generated in the MLA or generated from waste generated in the MLA.

(4) In estimating the tonnage of waste received at the waste facility during the period, the EPA is to take into consideration any of the following that the EPA considers appropriate in the circumstances—

- (a) in respect of waste other than liquid waste, a volumetric survey of waste at the facility carried out by a qualified surveyor,
- (b) available records in respect of the facility,

- (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.
- (5) If the EPA decides to base its estimate of the tonnage of waste received at the waste facility on a volumetric survey, the EPA may, by written notice to the occupier of the waste facility, require the occupier to ensure that—
- (a) a volumetric survey is carried out by a qualified surveyor within 21 days after the date of the notice, and
 - (b) a copy of the report of the qualified surveyor is forwarded to the EPA within 7 days after the occupier receives the report.
- (6) An occupier of a waste facility to whom such a notice has been given must comply with the requirements specified in the notice.

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

- (7) For the purposes of estimating the tonnage of waste received at a waste facility under this clause, on the basis of a volumetric survey—
- (a) the conversion formula is to be used in converting cubic metres of waste to tonnes of waste, or
 - (b) if the EPA is of the opinion that it is able to more accurately estimate the tonnage of the waste by using another method that is reasonably available to it than by using the conversion formula—the other method is to be used.
- (8) The **conversion formula** is—

$$T = V \times 2$$

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.

- (9) This clause has effect in respect of waste at a scheduled waste facility whether or not it was received before or after the commencement of this clause.

Division 4 Deductions from contributions

14 Operational purpose deduction (cf clause 11A(1)(a) and (c), (2), (3A), (5) and (5A) of 2005

Reg)

- (1) 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 an amount in respect of waste received at the facility that—
 - (a) has been or is to be used for a purpose to which a certificate issued under clause 15 applies, and
 - (b) has been or is to be used in accordance with the requirements specified in the certificate.
- (2) A deduction is not available under this clause in respect of waste that—
 - (a) exceeds the amount of waste specified in a certificate issued under clause 15, or
 - (b) is used other than in accordance with the requirements specified in the certificate.

15 Approval of operational purpose (cf clause 11 of 2005 Reg)

- (1) An occupier of a scheduled waste facility may apply to the EPA for approval to use at the facility any kind of waste referred to in the second column of the following table for any purpose (an **operational purpose**) specified opposite in the third column.

| Item | Kind of waste | Purpose |
|------|--|--|
| 1 | New asphalt, or new concrete, obtained at a batching plant. | Roads or other construction works. |
| 2 | Materials that meet the specifications in the Waste Levy Guidelines. | Roads of a kind specified in the Waste Levy Guidelines or other construction works of a kind specified in the Waste Levy Guidelines. |
| 3 | Any one or more of the following— <ol style="list-style-type: none"> (a) geonets, (b) geotextiles, (c) drainage layer media (having a thickness not greater than 300 millimetres) placed over landfill base and side liners, (d) piping. | Leachate collection systems that are associated with leachate management and are in accordance with the conditions of an environment protection licence. |

- Any one or more of the following—
- 4 (a) geomembranes,
(b) geotextiles,
(c) clay liners (having a thickness not greater than 900 millimetres),
(d) piping.
- Landfill lining systems (including landfill base and side liners) that are in accordance with the conditions of an environment protection licence.
- Any one or more of the following—
- 5 (a) geomembranes,
(b) geotextiles,
(c) clay liners (having a thickness not greater than 900 millimetres),
(d) piping,
(e) drainage layer media (having a thickness not greater than 300 millimetres) placed over landfill base and side liners.
- Stormwater management systems.
- Any one or more of the following that are in accordance with the conditions of an environment protection licence—
- 6 (a) drainage gravels,
(b) piping.
- (a) landfill gas collection systems that are associated with landfill gas management,
(b) groundwater management systems,
(c) drainage.
- Any one or more of the following—
- 7 (a) plastic sheeting,
(b) tarpaulins,
(c) spray-on foam.
- Daily cover for waste at landfill sites, in accordance with the conditions of an environment protection licence.
- 8 Virgin excavated natural material, or potential acid sulfate soils, not mixed with any other kind of waste.
- Placement of the material, ores or soils (in accordance with the conditions of an environment protection licence) to rehabilitate a sand mine.

| | | |
|----|---------------------------------------|--|
| 9 | Waste of any kind. | Final capping works, in accordance with the conditions of an environment protection licence, at landfill sites. |
| 10 | Waste of any kind. | Bedding layers to protect landfill lining systems if the layers are of a kind specified in the Waste Levy Guidelines. |
| 11 | Biofilter media and aggregate layers. | Biofilters for pollution or odour control (including underlying aggregate layers) that are in accordance with the conditions of an environment protection licence. |

- (2) The occupier may apply to the EPA for approval under this clause—
- (a) before the waste has been used for the operational purpose, or
 - (b) after the waste has been used for the operational purpose.
- (3) The application must include the following—
- (a) in the case of an application made before the waste has been used for an operational purpose—a plan for the use of the waste for the operational purpose,
 - (b) in the case of an application made after the waste has been used for an operational purpose—a report on the use of the waste for the operational purpose,
 - (c) any other information that the EPA requires for the purposes of determining whether or not to approve the application.
- (4) The EPA may, on an application under this clause, approve the use of waste for an operational purpose at the facility whether or not the waste has already been used for the operational purpose.
- (5) If the EPA approves an operational purpose under this clause, the EPA must issue a certificate to the occupier of the scheduled waste facility to the effect that the use of waste for the operational purpose has been approved.
- (6) The certificate 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 made before the waste has been used for the operational purpose—the period in which the waste is to be used for that purpose, and

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

- (7) The EPA may grant an exemption under clause 91 to the occupier of a scheduled waste facility from the requirement under section 48 of the Act to hold a licence for the scheduled activity of waste disposal in respect of waste used at the facility for an operational purpose approved by the EPA.

16 Transported waste deduction other than for trackable liquid waste

- (1) 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 an amount in respect of—
- (a) waste received at the facility that has been recovered, recycled or processed at that facility (in accordance with any requirements of the Waste Levy Guidelines) and transported from the facility to another place for a lawful use, or
 - (b) waste that has been processed at the facility (to any standards required by a resource recovery order applying at the time that the processing is completed to the occupier of the facility in relation to the supply of the waste) and transported from the facility to another place for a lawful use, or
 - (c) waste transported from the scheduled waste facility to another facility for recovery, recycling, processing or disposal but only if the occupier satisfies the EPA that the other facility may lawfully be used as a waste facility and that the waste was received by the other facility for lawful recovery, recycling, processing or disposal.
- (2) A deduction is not available under this clause in respect of—
- (a) trackable liquid waste received at the facility, or
 - (b) landfill gas or anything derived from landfill gas, or
 - (c) landfill leachate or anything derived from landfill leachate, or
 - (d) waste exhumed in contravention of clause 110A.
- (3) The EPA may require a person seeking to obtain a deduction under this clause to provide records or such other evidence that satisfies the EPA of any matter relating to the person's eligibility for the deduction and, in any such case, the deduction is not available unless the person satisfies the EPA of the particular matter.
- (4) The EPA may require, by notice in writing, that the occupier of a scheduled waste facility who obtains a deduction under this clause—
- (a) engage an independent person (approved by the EPA) to conduct an audit of, and to prepare a report on, deductions claimed under this clause for the period

specified in the notice, and

(b) to ensure that a copy of the report is provided to the EPA within the time specified in the notice.

(5) An occupier to whom a notice is given must comply with the notice.

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

17 Transported trackable liquid waste deduction (cf clause 11A(1)(b1) and (3AA) of 2005 Reg)

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 an amount in respect of trackable liquid waste received at the facility that has been transported from the facility (in accordance with any requirements of the Waste Levy Guidelines)—

- (a) as trackable liquid waste to another facility that can lawfully receive it, or
- (b) as a substance other than trackable liquid waste to a place for lawful recycling, re-use or processing, but only if any requirements of the Waste Levy Guidelines have been satisfied, or
- (c) as waste other than liquid waste to another scheduled waste facility within the regulated area for lawful disposal at the other facility.

18 Provisions applicable in relation to all deductions (cf clause 11A(4) and (6)–(9) of 2005 Reg)

(1) **No deduction available in respect of certain waste** A deduction is not available under this Division, in respect of waste received at a scheduled waste facility, if the waste—

- (a) has already been the subject of a deduction, in accordance with this Division, from the calculation of a contribution otherwise payable by the occupier, or
- (b) has already been exempted, in accordance with Division 5, from the calculation of the contribution otherwise payable by the occupier, or
- (c) was received at the facility more than 24 months before the date of the deduction and the facility is a scheduled waste disposal facility, or
- (d) was received at the facility more than 24 months before the date of the deduction and the deduction is a deduction under clause 14.

(2) **Calculation of amount of deduction** A deduction under this Division is to be—

- (a) 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, and

(b) following that calculation, rounded to the nearest cent (rounding 0.5 cent upwards).

(3) **Disallowance of deductions** The EPA may, by written notice to the occupier of a scheduled waste facility, disallow the whole or any part of a deduction made by the occupier under this Division if the EPA is satisfied that—

(a) the occupier was not allowed to make the deduction, or

(b) the deduction is not available in respect of the waste.

(4) The notice 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 Division as the EPA determines, or

(b) pay to the EPA an amount equal to the whole or such part of the deduction made by the occupier under this Division as the EPA determines.

(5) **Rebate where deduction exceeds contribution** If the amount of a deduction to which the occupier of a scheduled waste facility is entitled under this Division 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.

Division 5 Exemptions from requirement to pay contribution

19 (Repealed)

20 Exemption of certain other occupiers from requirement to pay contributions (cf clause 9 of 2005 Reg)

Note—

See clause 109 in relation to reporting requirements for occupiers of facilities who are not required to pay contributions because of an exemption under this clause.

(1) The occupier of any waste facility that is not a scheduled waste facility is exempt from the requirement to pay a contribution to the EPA under section 88 of the Act.

(2) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if—

(a) the facility is a scheduled waste facility because a prescribed scheduled activity is carried on at the facility, and

(b) no other activity in respect of waste received at the facility is carried on at the facility that would make the facility a scheduled waste facility (other than the storage of waste received in connection with the prescribed scheduled activity).

- (3) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if—
 - (a) the facility is not a scheduled waste disposal facility, and
 - (b) the facility is a scheduled waste facility because an activity listed in clause 26 (Metallurgical activities) of Schedule 1 to the Act is carried on at the facility.
- (4) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if—
 - (a) the facility is a scheduled waste facility only in respect of the storage, treatment, processing or sorting of clinical and related waste, hazardous waste, liquid waste or restricted solid waste (or any combination of those kinds of waste), or
 - (b) the facility is a scheduled waste facility only in respect of the disposal of slags or virgin excavated natural material (or both of those kinds of waste).
- (5) Nothing in this clause exempts the occupier of a scheduled waste facility from the requirement to pay contributions to the EPA in respect of trackable liquid waste received at the facility.
- (6) In this clause—

prescribed scheduled activity means a scheduled activity listed in any of the following provisions of Schedule 1 to the Act—

- (a) clause 7 (Ceramic works),
- (b) clause 12 (Composting),
- (c) clause 14 (Container reconditioning),
- (d) clause 15 (Contaminated soil treatment),
- (e) clause 30 (Paper or pulp production).

21 Certain types of waste exempted from calculation of contributions (cf clause 10(1) of 2005 Reg)

Note—

An exemption from the requirement to pay contributions under section 88 of the Act may also be granted by the EPA under Part 9 in relation to certain types of waste.

- (1) The following types of waste received at a scheduled waste disposal facility are exempted from the calculation of the contribution payable under section 88 of the Act for each tonne of that waste received at the waste facility—
 - (a) any spoil generated by dredging activities,

(b) any waste—

(i) collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and

(ii) approved by the EPA in writing for the purposes of this clause.

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

(2) Waste is not exempt under this clause 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 Division 1 of Part 3 with respect to the waste.

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

21A Mixed waste organic outputs exempted from calculation of contributions

(1) This clause applies to waste received at a scheduled waste disposal facility during the period commencing on 2 November 2018 and ending immediately before 2 May 2022.

(2) Waste consisting of mixed waste organic outputs that is received at a scheduled waste disposal facility is exempted from the calculation of the contribution payable under section 88 of the Act for each tonne of that waste that has been processed at an approved scheduled waste facility.

(3) For the purposes of this clause, **mixed waste organic outputs** is a substance that—

(a) consists only of pasteurised and biologically stabilised organic outputs produced from the mechanical biological treatment of general solid waste (putrescible) (within the meaning of Schedule 1 to the Act), and

(b) complies with any other requirements specified by the EPA by notice published in the Gazette for the purposes of this clause.

(4) The EPA may, by notice published in the Gazette—

(a) approve a scheduled waste facility for the purposes of this clause, and

(b) limit the amount of the waste processed by the approved scheduled waste facility that is exempted from the calculation of the contribution payable for waste received at a scheduled waste disposal facility.

(4A) The notice may specify the period during which the approval under subclause (4)(a) is to have effect, which must not exceed—

(a) a period of 12 months from the date of the notice, or

- (b) if the notice is varied during the approval period—a period of 12 months from the date the notice is varied.
- (5) An exemption under this clause does not apply to any amount of the waste received at the scheduled waste disposal facility that exceeds the amount specified in the notice under subclause (4)(b) in relation to the approved scheduled waste facility concerned.
- (6) An exemption under this clause does not apply unless the approved scheduled waste facility certifies in writing that the waste does not contain any substance other than mixed waste organic outputs.
- (7) Waste is not exempt under this clause from the calculation of the contribution payable by the occupier of a scheduled waste disposal facility if the occupier fails to comply with any requirement under Division 1 of Part 3 with respect to the waste.
- (8) The EPA may vary or revoke a notice under this clause by notice published in the Gazette.

Division 6 Reports and surveys

22 Waste contribution monthly reports (cf clause 13 of 2005 Reg)

- (1) This clause does not apply in respect of trackable liquid waste.
- (2) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must, within 26 days after the end of each month, provide the EPA with the following information (in the approved form and manner)—
 - (a) the quantity of waste received at the waste facility during the month to which the report relates,
 - (b) the waste types (determined in accordance with the Waste Levy Guidelines) of waste received at the waste facility during the month to which the report relates,
 - (c) any approved particulars relating to the waste facility.

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

- (3) If the waste facility is located outside the regulated area, the occupier of the facility is not required to provide information under this clause in relation to waste received at the facility unless the waste has been generated in, or generated from waste generated in, the regulated area.

Note—

The **regulated area** consists of local government areas located in the metropolitan or regional levy areas. Occupiers of scheduled waste facilities located outside the regulated area are required to pay a contribution under this Part only in respect of waste that has been generated in, or generated from waste generated in,

the regulated area.

See clause 109 in relation to reporting requirements for occupiers of scheduled waste facilities located outside the regulated area.

- (4) The EPA may grant an exemption under Part 9 from any requirement under this clause.
- (5) (Repealed)

23 Periodic volumetric surveys of scheduled waste facilities (cf clause 14 of 2005 Reg)

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must—
 - (a) in the case of a scheduled waste disposal facility that is a landfill site—
 - (i) cause a volumetric survey of the facility to be carried out by a qualified surveyor during June and December in each year, and
 - (ii) provide the results to the EPA (in any form and manner specified by the Waste Levy Guidelines) by no later than the following 31 July and 31 January, respectively, and
 - (b) in any other case—
 - (i) determine the amount of waste at the facility in a manner and at such time as may be required by the EPA by notice in writing to the occupier, and
 - (ii) keep records of the results in accordance with the requirements specified in the notice, and
 - (iii) provide the results to the EPA in accordance with the requirements of the notice.

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

- (2) The occupier must also—
 - (a) cause a volumetric survey of the waste facility to be carried out by a qualified surveyor at any other time, or within any period, specified by the EPA by written notice to the occupier, and
 - (b) provide the results to the EPA (in any form and manner specified by the Waste Levy Guidelines) by no later than any time, or the end of any period, specified in the notice.
- (3) The occupier must—
 - (a) keep a copy of the results of each survey for a period of at least 6 years after the

date on which the survey is carried out, and

(b) make those results available for inspection and copying by an authorised officer on request.

(4) The EPA may, by written notice to the occupier of a waste facility, defer the application of any requirement under this clause in respect of the occupier until any time specified in the notice.

(5) The EPA may grant an exemption under Part 9 from any requirement under this clause.

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

24 EPA may require topographical survey of scheduled waste facility

(1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must—

(a) cause a topographical survey of the facility to be carried out by a qualified surveyor at any time, or within any period, specified by the EPA by written notice to the occupier, and

(b) provide the results to the EPA (in any form and manner specified by the Waste Levy Guidelines) by no later than any time, or the end of any period, specified in the notice.

(2) The occupier must—

(a) keep a copy of the results of each survey for a period of at least 6 years after the date on which the survey is carried out, and

(b) make those results available for inspection and copying 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.

24A Surveys to be carried out in accordance with Waste Levy Guidelines

An occupier of a waste facility who is required to cause a volumetric survey or a topographical survey to be carried out under this Division must ensure that the survey is carried out in accordance with any requirements specified in the Waste Levy Guidelines.

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

Division 7 Other

25 Interest on unpaid contributions (cf clause 8 of 2005 Reg)

- (1) The interest on a contribution under section 88 of the Act that is not fully paid by the due date for payment of the contribution is to be calculated daily (at the prescribed rate)—
 - (a) from the day immediately following the due date, and
 - (b) on so much of the contribution as remains outstanding.

Note—

Accordingly, interest ceases to accumulate when the contribution has been fully paid (whether or not interest is fully paid at that time).

- (2) The **prescribed rate** at which interest is to be charged on the outstanding amount of a contribution is the sum of the following per annum—
 - (a) 8 per cent,
 - (b) the cash rate target released by the Reserve Bank of Australia that is applicable for the first business day after the due date for payment of the contribution.

25A EPA may estimate changes to mass of waste

- (1) This clause applies if the EPA reasonably believes that the mass of waste may have changed while it is at a scheduled waste facility or the occupier of the facility has incorrectly calculated the mass of waste at a facility.
- (2) The EPA may, for the purposes of this Part, estimate the amount of waste at a facility at a particular time and as a result of that estimate adjust a report under clause 22 and any contribution liability accordingly.
- (3) The EPA, in making an estimation under this clause, may take into consideration any information available to the EPA including any volumetric surveys of the waste, the records of the facility and any information provided by an authorised officer who has inspected the facility.
- (4) This clause applies to a scheduled waste facility regardless of whether the facility is also permitted to carry out waste disposal.

25B Rebate of contribution

The EPA may pay a rebate to the occupier of a scheduled waste facility that is not a scheduled waste disposal facility of an amount equivalent to any contribution under section 88 of the Act in respect of waste if the EPA is satisfied that the waste has been transported from the scheduled waste facility for recovery, recycling, processing or

disposal to another facility that may lawfully be used as a waste facility and that the waste was received for lawful recovery, recycling, processing or disposal.

Part 3 Records, measurement of waste and monitoring at scheduled waste facilities

Division 1 Record keeping

(cf clauses 10(2) and (3) and 12 of 2005 Reg)

26 “Waste types” and “waste streams”

- (1) For the purposes of this Division, the **waste type** of waste is to be determined in accordance with the Waste Levy Guidelines.
- (2) For the purposes of this Division, the **waste stream** of waste is a reference to the waste stream and (if applicable) waste sub-stream that best describes the source of the waste and is to be determined in accordance with the Waste Levy Guidelines.

27 Waste and other material received at facility

The occupier of a scheduled waste facility must record the following information in relation to each delivery of waste or other material received at the facility—

- (a) the amount of any waste delivered, its waste type and (except where the waste is trackable liquid waste) its waste stream,
- (b) the amount of any other material delivered and a description of the nature of that other material,
- (c) the amount of any waste delivered that is spoil generated by dredging activities,
- (d) if any of the waste delivered has been collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and been approved by the EPA for the purposes of clause 21—
 - (i) the date of the approval and the code or number allocated by the EPA for the approval, and
 - (ii) the amount of that waste, and
 - (iii) particulars of the community service or activity, biological outbreak or natural disaster in respect of which the waste has been collected,

Note—

The waste referred to in paragraphs (c) and (d) is exempted by clause 21 from the calculation of waste contributions payable by the occupier of the waste facility.

- (e) the date and time the delivery is made,

- (f) the registration number of the vehicle used to make the delivery,
- (g) in the case of waste transported to the waste facility from another waste facility—
 - (i) the name and address of the other facility, and
 - (ii) the code or number of any environment protection licence for the other facility,
- (h) in the case of an occupier who is required to pay contributions under section 88 of the Act—particulars of where any waste or other material delivered is placed at the facility.

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

28 Waste and other materials transported from facility for use, recovery, recycling, processing or disposal

The occupier of a scheduled waste facility must record the following information in relation to each load of waste or other material transported from the facility for use, recovery, recycling, processing or disposal at another place—

- (a) the amount of any waste contained in the load, its waste type and (except where the waste is trackable liquid waste) its waste stream,
- (b) the amount of any other material contained in the load and a description of the nature of that other material,
- (c) the amount of any waste contained in the load that is spoil generated by dredging activities,
- (d) if any of the waste in the load has been collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and been approved by the EPA for the purposes of clause 21—
 - (i) the date of the approval and the code or number allocated by the EPA for the approval, and
 - (ii) the amount of that waste, and
 - (iii) particulars of the community service or activity, biological outbreak or natural disaster in respect of which the waste has been collected,

Note—

The waste referred to in paragraphs (c) and (d) is exempted by clause 21 from the calculation of waste contributions payable by the occupier of the waste facility.

- (e) the date and time the load is transported from the facility,

- (f) the registration number of the vehicle used to transport the load,
- (g) the name and address of the place to which the load is transported and the code or number of any environment protection licence for that place,
- (h) in the case of waste or other material in the load that is removed from a stockpile required to have a unique identification number under clause 31(1)(a)—the unique identification number,
- (i) in the case of an occupier who is required to pay contributions under section 88 of the Act—details of any recycling, mixing, blending or processing of any waste in the load, including the composition as a proportion of waste and other material in any waste-derived material in the load.

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

29 Other records relating to vehicles

The occupier of a scheduled waste facility must record the following particulars in relation to vehicles that enter the facility for a purpose related to the operation of the facility (whether or not the vehicle is being, or is intended to be, used to deliver or transport waste)—

- (a) the date and time on which the vehicle enters the facility,
- (b) the date and time on which the vehicle leaves the facility,
- (c) the registration number of the vehicle,
- (d) the purpose of entry,
- (e) the weight of the vehicle.

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

30 Waste used for operational purpose at facility if occupier required to pay contribution

The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must record the following information in relation to any waste of a kind referred to in the second column of the table to clause 15(1) that is used at the facility for a purpose specified opposite in the third column of that table—

- (a) the amount of waste and its waste type,
- (b) the nature of the purpose,
- (c) the date the waste is used,

- (d) particulars of any certificate issued under clause 15 relating to the use of waste for the purpose.

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

31 Waste and other material stockpiled at facility if occupier required to pay contribution

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must record the following information in relation to any waste and any other material stockpiled at the facility (other than trackable liquid waste and material mixed with trackable liquid waste)—
- (a) a unique identification number for each stockpile,
 - (b) the quantity of any waste (and its waste type) or other material held in each stockpile as at 30 June and 31 December of each year,
 - (c) the quantity of any waste (and its waste type) or other material that is added to or removed from each stockpile each day.
- (2) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must, if any trackable liquid waste (including any material mixed with trackable liquid waste) is stockpiled at the facility, record the quantity of that waste (and its waste type) held in each stockpile as at 30 June of each year.

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

32 Records on measuring of waste by method other than weighbridge

The occupier of a scheduled waste facility who, in accordance with Division 2, uses a method other than a weighbridge to measure and record the quantities of waste and other material transported into or out of the facility must record any information, in relation to the use of the method by the occupier, that is specified in the Waste Levy Guidelines.

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

33 Keeping, retention and availability of records

The occupier of a scheduled waste facility who is required to record information under this Division must—

- (a) record and keep the information in accordance with any requirements of the Waste Levy Guidelines, and
- (b) ensure that each record is retained for at least 6 years after the record is made, and

- (c) make any of the records available for inspection and copying 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.

34 Provision of records relating to trackable liquid waste

The occupier of a scheduled waste facility who is required to record information under this Division relating to trackable liquid waste or material mixed with trackable liquid waste must ensure that the records are provided to the EPA electronically at the times, and in any form and manner, specified in the Waste Levy Guidelines.

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

35 Exemptions

The EPA may grant an exemption under Part 9 from any provisions of this Division.

Division 2 Measurement of waste

36 Weighbridges at facilities whose occupiers are required to pay waste contributions (cf clause 15 of 2005 Reg)

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must ensure that there is a 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) This clause does not apply to the occupier of a scheduled waste facility that receives only the following waste for storage, treatment, processing, sorting or disposal—

- (a) clinical and related waste,
- (b) hazardous waste,
- (c) liquid waste,
- (d) restricted solid waste.

- (3) The occupier 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 (a **vehicle flow control plan**), and

- (b) if any change occurs in relation to those vehicle flow controls, submit a revised vehicle flow control plan to the EPA no later than 30 days after the relevant change occurs, and
- (c) keep a copy of the latest vehicle flow control plan on the premises and make the plan available for inspection and copying by an authorised officer on request, and
- (d) ensure that—
 - (i) each vehicle that enters or leaves the waste facility for a purpose relating to the operation of the facility (whether or not the vehicle is being, is intended to be or has been used to transport or deliver waste) is weighed by the weighbridge on entering and on leaving the facility, or
 - (ii) during any period that the weighbridge is out of operation, an alternative method that is specified in the Waste Levy Guidelines is used to measure and record the quantity of waste and other material transported into or out of the waste facility, and
- (e) take all reasonable steps to ensure that the weighbridge is maintained in proper working order, and
- (f) ensure that the weighbridge is verified (within the meaning of the *National Measurement Act 1960* of the Commonwealth) at least once a year, and
- (g) ensure that the weighbridge has related software that records quantities of waste in any form and manner specified in the Waste Levy Guidelines, and
- (h) notify the EPA of any incident that results in the weighbridge being out of operation for any period of more than 24 hours (and do so immediately on becoming aware that the incident will result in the weighbridge being out of operation for any such period), and
- (i) comply with any other requirement relating to the installation or operation of the weighbridge that the EPA may specify by written notice to the occupier.

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

- (4) The EPA may, by written notice to the occupier of a waste facility, defer the application of any requirement under this clause in respect of the occupier, subject to any conditions specified in the notice, until any time specified in the notice.

Note—

The conditions may (for example) include a condition that the quantity of waste that is transported into or out of the facility is measured, and recorded, using a specified method, including a method specified in the Waste Levy Guidelines.

37 Measuring and recording of waste at facilities whose occupiers are not required to pay

waste contributions

An occupier of a scheduled waste facility who is not required to pay contributions under section 88 of the Act must ensure that the quantity of waste that is transported into or out of the facility is measured, and recorded, using a method specified in the Waste Levy Guidelines or by the EPA.

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

38 Exemptions

The EPA may grant an exemption under Part 9 from any provisions of this Division.

Division 3 Monitoring

39 EPA may require video monitoring system (cf clause 16 of 2005 Reg)

- (1) The EPA may, by written notice to an occupier of a scheduled waste facility, require the occupier—
 - (a) to install, operate and maintain in the manner specified in the notice a video monitoring system that conforms with the specifications in the notice, and
 - (b) to operate the system during the times specified in the notice or at all times.
- (2) The occupier must—
 - (a) comply with the requirements specified in the notice within the period specified in the notice, and
 - (a1) ensure that no activity takes place under the environment protection licence for the facility at any time when the video monitoring system is not fully operational, and
 - (b) ensure that video monitoring records made under this clause are kept for at least 3 years after being made, and
 - (c) make those recordings available for inspection and copying 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 4 Tracking of certain waste transported within, out of and into

NSW

Division 1 Preliminary

40 Definitions (cf clause 17 of 2005 Reg)

In this Part—

agency agreement—see clause 48(2)(b).

authorised agent, in relation to the transportation of waste, means a person appointed, in accordance with Division 5, as an authorised agent for the transportation of the waste.

consignment authorisation means—

- (a) in relation to the transportation of waste to a waste facility in New South Wales—a consignment authorisation issued under Division 6 authorising the transportation of the waste to that facility, and
- (b) in relation to the transportation 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 transportation of the waste to that facility.

consignor of waste, in relation to the transportation of waste, means—

- (a) in the case of waste that is transported from a waste facility—
 - (i) if the occupier of the facility has not appointed an authorised agent under Division 5 in relation to the waste—the occupier of the facility, or
 - (ii) if the occupier of the facility has appointed an authorised agent under Division 5 in relation to the waste—that authorised agent, or
- (b) in any other case—any person who is the consignor of the waste.

participating State means a participating State (other than New South Wales), or a participating Territory, within the meaning of the [National Environment Protection Council \(New South Wales\) Act 1995](#).

receiver of waste means the occupier of a waste facility to which the waste is transported.

transporter of waste means any person who carries on business involving the transportation of the waste.

waste transport certificate means a waste transport certificate in the approved form.

41 Transportation of waste to which this Part does and does not apply (cf clauses 18 and 19)

of 2005 Reg)

(1) This Part applies to—

- (a) the transportation of waste within New South Wales if the waste is of a type described in Part 1 of Schedule 1, and
- (b) the transportation 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—

Division 8 provides a defence in any 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.

(2) However, this Part does not apply to any of 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—
 - (i) in the case of the transportation of the waste to a place in New South Wales—the EPA, or
 - (ii) in the case of the transportation of the waste to a participating State—the agency, within the meaning of NEPM, of the participating 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, within the meaning of NEPM, 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.

(3) In this clause—

NEPM means the *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998* made under section 14(1) of the *National Environment Protection Council (New South Wales) Act 1995*.

Note—

NEPM is also made under the *National Environment Protection Council Act 1994* of the Commonwealth and is available on www.comlaw.gov.au.

42 Exemptions from provisions of this Part (cf clause 20 of 2005 Reg)

The EPA may grant an exemption under Part 9 from any provisions of this Part.

Division 2 Obligations on consignor of waste

43 Obligations on consignor of waste relating to transportation of waste (cf clause 22 of 2005 Reg)

- (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 authorising the transportation of the waste from the place to the other place, 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 holds an environment protection licence (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 can lawfully accept waste of the type concerned.
- (2) A consignor of waste must comply with any condition of a consignment authorisation that is held by the consignor.

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

44 Copy of waste transport certificate to be given to occupier of waste facility (cf clause 23

of 2005 Reg)

A consignor who is an authorised agent of the occupier of a waste facility must, within 7 days after the day on which the consignor gives to the transporter a waste transport certificate relating to the transportation of waste from the facility, give a copy of the certificate to the occupier in the same form as it was given by the consignor 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

45 Obligations on transporter of waste (cf clause 24 of 2005 Reg)

- (1) A transporter of waste must—
 - (a) before transporting the waste—
 - (i) 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
 - (ii) ensure that there is a consignment authorisation that authorises the transportation of the waste, and
 - (b) ensure that the waste transport certificate for the waste is carried in any vehicle used by the transporter to transport the waste.
- (2) A transporter of waste must not remove the waste, or cause the waste to be removed, from any vehicle used to transport the waste unless—
 - (a) in the case of waste removed at a waste facility—
 - (i) the receiver at the facility has been given the waste transport certificate in respect of the waste and has consented to the waste being removed at the facility, or
 - (ii) there is no waste transport certificate in respect of the waste but the receiver at the facility has consented to the waste being removed at the facility and the facility can lawfully store the waste, or
 - (b) in any case—the waste is being directly transferred to another vehicle, the transfer is recorded on the waste transport certificate and, if the transporter using the other vehicle is another transporter, the waste transport certificate is given to the other transporter.
- (3) However, the transporter must remove the waste, or cause the waste to be removed, from the vehicle in accordance with any directions of an authorised officer.

- (4) A transporter of waste that has been rejected under Division 4 by a receiver of the waste must ensure that—
- (a) the waste transport certificate for the waste, endorsed by the receiver with the information that the receiver has rejected the waste, is carried in any vehicle used by the transporter to transport the waste, and
 - (b) the waste is transported to the waste facility identified under clause 47(2) by the receiver.

Note—

Clause 47(3) provides that a consignment authorisation, or waste transport certificate, for waste that has been rejected by a receiver of waste is taken to authorise the transportation of the waste to a waste facility that can lawfully accept the waste.

- (5) A transporter of waste has a defence in any proceedings for an offence arising under subclause (4)(b) if the transporter establishes that the transporter—
- (a) was not informed, in accordance with clause 47(2), of another waste facility to which the waste could be transported, and
 - (b) ensured that the waste was delivered to a waste facility that could lawfully accept the waste, and
 - (c) notified the EPA in writing, within 3 working days after the waste was transported from the facility at which it was rejected, of the waste facility to which the waste was delivered.
- (6) A transporter of waste must comply with any condition of a consignment authorisation for the transportation of the waste.

Maximum penalty—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

46 Obligations on receiver of waste relating to waste (cf clause 25 of 2005 Reg)

- (1) A receiver of waste must ensure that the following particulars are recorded on the waste certificate for the waste—
- (a) as soon as practicable after the waste arrives at the facility occupied by the receiver—the date on which the waste arrived,
 - (b) within 21 days after the waste arrives (or any longer period permitted by the EPA in writing) at the facility—
 - (i) whether the receiver has accepted or rejected the waste, and

- (ii) the date on which the waste was accepted or rejected, and
 - (iii) in the case of the waste being rejected—the reason it was rejected,
 - (c) (in a case where the waste is accepted and is processed at the facility) within 3 working days after the waste is processed—the date on which the waste was processed and the method of processing used,
 - (d) (in a case where the waste is accepted and is only stored at the facility) within 3 working days after the waste is accepted—that the waste has been accepted for storage.
- (2) If waste is transported to a waste facility without a waste transport certificate, the receiver of the waste must, as soon as practicable after the waste arrives at the facility—
- (a) generate a waste transport certificate for the waste, and
 - (b) complete any parts of the certificate (including any parts required to be completed by the consignor and transporter, except for any signature or certification required) that it is possible for the receiver to complete based on the information available to the receiver.
- (3) A receiver of waste must not accept the waste unless the receiver has—
- (a) ensured that there is a consignment authorisation that authorises the transportation of the waste to the facility occupied by the receiver (a **valid consignment authorisation** for the waste), and
- Note—**
- Clause 47(3) provides that a consignment authorisation for waste that has been rejected by a receiver of waste is taken to authorise the transportation of the waste to a waste facility that can lawfully accept the waste.
- (b) obtained any waste transport certificate for the waste required to be carried in any vehicle used by the transporter to transport the waste (completed in accordance with this Part), and
 - (c) certified that any part of the certificate that is required to be completed by the receiver has been completed accurately.
- (4) However, if the receiver holds an environment protection licence authorising the storage of the waste at the facility, the receiver may accept the waste even though—
- (a) there is no valid consignment authorisation for the waste, or
 - (b) the waste was transported to the facility without a waste transport certificate for the waste, or

(c) the waste was transported to the facility with an inaccurate or incomplete waste transport certificate for the waste.

(5) A receiver of waste must notify the EPA in writing—

(a) within 3 working days after the waste arrives at the waste facility occupied by the receiver without a valid consignment authorisation or without a waste transport certificate—that it was transported to the facility without the authorisation or certificate (as the case may be), and

(b) within 3 working days after accepting or rejecting waste transported to the facility with a waste transport certificate that the receiver considers to be inaccurate or incomplete—

(i) that it was transported to the facility with an inaccurate or incomplete certificate, and

(ii) of the ways in which the receiver considers the certificate to be inaccurate or incomplete, and

(iii) to the extent possible for the receiver (based on information available to the receiver)—of the corrected or missing particulars, and

(c) within 3 working days after rejecting waste transported to the facility—that the waste has been rejected and of the date on which it was rejected.

(6) A receiver of waste must, within 14 days after accepting or rejecting the waste, notify the consignor in writing as to whether the receiver has accepted or rejected the waste.

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

47 Other consequences if receiver accepts or rejects waste (cf clause 26 of 2005 Reg)

(1) If a receiver of waste accepts the waste, any subsequent transportation of the waste from the waste facility occupied by the receiver 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 the waste, the receiver must inform the transporter of the waste of a waste facility—

(a) to which the waste can be transported, and

(b) that can lawfully accept the waste.

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 transportation of the waste from the facility occupied by the receiver to a waste facility that can lawfully accept the waste.

Division 5 Authorisation of agents as consignors

48 Appointment of authorised agent (cf clause 27 of 2005 Reg)

- (1) An occupier of a waste facility may appoint a person as an authorised agent in relation to the transportation of waste from the facility.
- (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 this Division (an **approval**) that is in force, and
 - (b) the appointment is evidenced by an agreement (an **agency 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 waste under this Part.
- (3) The EPA may require (generally or in a particular case or class of cases) an agency agreement to be in the approved form.
- (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 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 by an agency agreement in accordance with 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 has been revoked, notify the occupier in writing that the approval has been revoked.

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

49 Approval of transporters or receivers as authorised agents (cf clause 28 of 2005 Reg)

- (1) The EPA may grant an approval to a transporter or a receiver of waste authorising the appointment of the transporter or receiver as an authorised agent.
- (2) An approval is to be in writing and may be issued subject to conditions.
- (3) The EPA may revoke an approval for any reason.
- (4) A revocation of an approval is effected by notice in writing given to the relevant transporter or receiver of waste.
- (5) The holder of an approval must 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, if an approval of a person to be appointed as an authorised agent is revoked after waste has been transported from a waste facility and (immediately before the revocation) the person was the authorised agent of the occupier of the facility, in relation to the transportation of the waste, the approval is taken to continue in force, in relation to the transportation of the waste.
- (7) However, the approval is taken to continue in force only until the waste is transported to a waste facility at which the waste is lawfully accepted.

Division 6 Consignment authorisations

50 Issue of consignment authorisations (cf clause 29 of 2005 Reg)

- (1) The EPA, or a receiver of waste who is approved under this Division by the EPA, may issue a consignment authorisation to a consignor of waste authorising the transportation of waste to a waste facility in New South Wales.
- (2) A consignment authorisation is to be in the approved form and (subject to subclause (4)(b)) may be issued subject to conditions.
- (3) A consignment authorisation may authorise—
 - (a) the transportation of one or more loads of waste, and
 - (b) the transportation of waste from one or more premises to a single waste facility.
- (4) A receiver of waste must not issue a consignment authorisation unless the authorisation—
 - (a) is in the approved form, and
 - (b) is issued in accordance with an approval granted to the receiver by the EPA under this Division, and

- (c) is issued to a consignor of waste, and
- (d) only authorises the transportation of the waste to a waste facility occupied by the receiver, and
- (e) is only issued for the transportation of waste that the receiver can lawfully 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 the period (not exceeding 12 months after the date of its issue) specified in the consignment authorisation.
- (6) A consignment authorisation may be revoked for any reason by the EPA or by a receiver of waste who issued it.
- (7) A revocation of a consignment authorisation is effected by notice in writing given to the relevant consignor of waste.

51 Approval of receivers of waste to issue consignment authorisations (cf clause 30 of 2005 Reg)

- (1) The EPA may grant an approval to a receiver of waste for the purposes of issuing consignment authorisations.
- (2) An approval is to be in writing and may be issued subject to conditions.
- (3) The EPA may revoke an approval for any reason.
- (4) A revocation of an approval is effected by notice in writing given to the relevant receiver of waste.

52 Expired or revoked consignment authorisation (cf clause 31 of 2005 Reg)

For the purposes of this Part, if a consignment authorisation that authorises the transportation of waste to a waste facility expires or is revoked after the waste leaves the place from which it is being transported, the authorisation is taken to continue in force in relation to the transportation of that waste, but only until the waste is transported to a waste facility at which the waste is accepted.

Division 7 Record keeping and receivers' returns

53 Record keeping requirements relating to occupiers of waste facilities (cf clause 32 of 2005 Reg)

An occupier of a waste facility who has an authorised agent must ensure that the following records are retained for at least 4 years—

- (a) copies of each waste transport certificate given to the occupier of the waste facility by the authorised agent,
- (b) copies of each agency agreement evidencing the appointment of the authorised agent.

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

54 Record keeping requirements relating to consignors of waste (cf clause 33 of 2005 Reg)

A consignor of waste must ensure that the following records are retained for at least 4 years—

- (a) copies of each consignment authorisation issued to the consignor,
- (b) copies of each waste transport certificate required to be completed by the consignor under this Part,
- (c) 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 any such waste transport certificate was transported and copies of each agency agreement entered into by the consignor.

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

55 Record keeping requirements relating to transporters of waste (cf clause 34 of 2005 Reg)

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

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

56 Record keeping requirements relating to receivers of waste (cf clause 35 of 2005 Reg)

A receiver of waste must ensure that the following records are retained 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.

57 Returns by receivers of waste (cf clause 36 of 2005 Reg)

A receiver of waste—

- (a) must provide the EPA (or any other person or body approved for the purposes of this clause) with any information that the EPA (or the other person or body) requires in relation to the waste received by the receiver, including a description of the waste, the quantity of the waste and any proposed treatment intended for the waste, and
- (b) must ensure that a copy of the information provided is retained for a period of at least 4 years after the day it was provided.

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

58 Records to be made available for inspection and copying by authorised officer (cf clause 22(2)(c) of 2005 Reg)

A person who is required to ensure that records are retained under this Division must make those records available for inspection and copying 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.

59 Approved record keeping systems (cf clause 37 of 2005 Reg)

- (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 42, the EPA may grant, to any person or class of persons who establishes such an approved system, an exemption under Part 9 from any provisions of this Part relating to the keeping of records or the giving of notices or other documentation.

Division 8 Miscellaneous

60 Exemption relating to authorised interstate transporters of waste (cf clause 38 of 2005 Reg)

- (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) It is a condition of that exemption that the person comply with the conditions of the

person's equivalent transport authorisation to the extent that those conditions apply to the transportation of waste to which this Part applies.

(4) In this clause—

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 transportation to which clause 48 (Transportation of trackable waste) of Schedule 1 to the Act applies.

61 Defences (cf clause 39 of 2005 Reg)

- (1) It is a defence in any 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 in any proceedings for an offence against any provision of this Part relating to the transportation of waste if the defendant establishes that—
 - (a) the waste 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.

62 Offence relating to false information about waste (cf clause 40(2) and (3) of 2005 Reg)

Note—

See also section 144AA of the Act.

- (1) An authorised agent of an occupier of a waste facility must notify the EPA within 3 working days after becoming aware that the occupier has given information about waste to the agent 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.

- (2) 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.

63 Approved forms (cf clause 41 of 2005 Reg)

- (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 5 Reporting on waste from metropolitan levy area transported out of NSW

64 Definitions

In this Part—

consignor of waste, in relation to the transportation of waste, means—

- (a) in the case of waste that is transported from a waste facility—the occupier of the waste facility, or
- (b) in any other case—any person who is the consignor of the waste.

interstate waste facility means a waste facility in a State or Territory, other than New South Wales.

transporter of waste means a person who carries on any business involving the transportation of the waste.

65 Transportation of waste to which this Part does and does not apply

- (1) This Part applies to the transportation of waste from New South Wales to an interstate waste facility if the waste has been generated in, or generated from waste generated in, the metropolitan levy area.
- (2) However, this Part does not apply to any of the following—
 - (a) the transportation of less than 10 tonnes of waste,
 - (b) the transportation of waste of a type described in Part 1 or Part 2 of Schedule 1,

Note—

Part 4 of this Regulation applies to the transportation of that type of waste.

- (c) the transportation of liquid waste,

- (d) the transportation of special waste that would be liquid waste were it not for the express exclusion in the definition of **liquid waste** in Part 3 of Schedule 1 to the Act,
- (e) the transportation of waste in an emergency to protect human health, the environment or property,
- (f) the transportation of waste by pipeline,
- (g) 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,
- (h) the transportation of waste from New South Wales that commenced before the commencement of this Part.

66 Exemptions from provisions of this Part (cf clause 20 of 2005 Reg)

The EPA may grant an exemption under Part 9 from any provisions of this Part.

67 Consignor to arrange transportation only to lawful interstate waste facility

A consignor of waste must not arrange for the transportation of waste to an interstate waste facility unless the facility can lawfully receive waste of the type concerned.

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

68 Information to be provided to EPA

- (1) A consignor of waste must cause the following information to be given to the EPA (by using the EPA's online waste tracking system) within 3 days after the transportation of the waste commences—
 - (a) the name, address and contact details of the consignor,
 - (b) the name, address and contact details of the premises from which the waste is transported (if different from the name, address and contact details referred to in paragraph (a)),
 - (c) the date on which the waste is transported from the waste facility or other premises concerned,
 - (d) the name, address and contact details of the transporter,
 - (e) the mode of transportation,
 - (f) if the vehicle used to transport the waste is a motor vehicle—the registration number of the vehicle (as advised to the consignor by the transporter),

(g) the name and address of the interstate waste facility to which the waste is transported,

(h) the type and amount of waste (in tonnes).

(2) The consignor must, within 3 days after the transportation commences, give to the transporter of the waste the identifying particulars for the load of waste concerned.

(3) A transporter of waste must give written notice to the EPA, within 4 days after the transportation of the waste commences, if the consignor has failed to give the transporter the identifying particulars for the load of waste concerned.

(4) A reference in this clause to the **EPA's online waste tracking system** is a reference to the online waste tracking system operated by the EPA and approved by it, for the purposes of this clause, from time to time.

(5) In this clause—

identifying particulars for a load of waste means identifying particulars for the load that are allocated by the EPA's online waste tracking system.

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

Part 6 Other provisions relating to transportation of waste

69 Interpretation—waste transported by councils

For the purposes of this Part, a council that transports waste is taken to do so in the course of business.

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

Note—

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

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

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

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

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

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

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

- (4) In this clause—

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

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

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

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

- (8) **Exception for owner when not driver** Subclauses (1)–(3) do not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and—

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

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

- (9) **Notice given by owner or driver** Section 146(7)–(9) of the Act apply to a notice for the purposes of subclause (8) in the same way as they apply to a notice for the purposes of section 146(5) of the Act.

71 Application of proximity principle to transportation in course of business

- (1) A person must not, in the course of business, transport by motor vehicle any waste that is generated in New South Wales (other than restricted solid waste) to any place, in or outside of New South Wales, unless the place can lawfully be used for the disposal of that waste and one of the following applies—
 - (a) the place is 150 kilometres or less from the premises of origin of that waste,
 - (b) the place is more than 150 kilometres from the premises of origin and is the closest or second closest to those premises of the places, in or outside New South Wales, that can lawfully be used for the disposal of that waste.
- (2) However, the person can also transport the waste to another State or a Territory if a border crossing to that State or Territory—
 - (a) is 150 kilometres or less from the premises of origin, or
 - (b) is more than 150 kilometres from the premises of origin and is closer to those premises than the closest or second closest to those premises of the places in New South Wales that can lawfully be used for the disposal of that waste.
- (3) For the purposes of this clause, distance is to be measured in a straight line.
- (4) A person must not, in the course of business, transport by motor vehicle restricted solid waste that is generated in New South Wales to any place unless the place can lawfully be used for the disposal of that waste and one or both of the following apply—
 - (a) the place is the closest place, in or outside New South Wales, to the premises of origin of that waste that can lawfully be used for the disposal of that waste,
 - (b) the place is in another State or Territory and a border crossing to that State or Territory is closer to the premises of origin than any place in New South Wales that can lawfully be used for the disposal of that waste.
- (5) It is a defence in any proceedings for an offence against this clause, in relation to the transportation of waste to a place, if the defendant establishes that the waste—
 - (a) was not deposited at the place to which it was transported, or
 - (b) was transported to the place for the purposes of any of the following activities and the activity can lawfully be carried out at the place—
 - (i) recovering or re-using that waste or substances contained in that waste at the place,
 - (ii) recovering energy from that waste at the place,
 - (iii) treating or processing that waste at the place for the recovery, re-use or

recycling of the waste or substances contained in the waste (whether or not at the place), or

(c) was transported to the place in an emergency to protect human health, the environment or property, or

(d) was transported to the place 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.

(6) The EPA may grant an exemption under Part 9 from this clause in relation to the transportation of any waste that is category 1 trackable waste or category 2 trackable waste.

(7) For the avoidance of doubt—

(a) a reference in this clause to the **generation** of waste does not include a reference to the sorting or separation of that waste from other waste, and

(b) a reference in this clause to the **processing, recovery** or **recycling** of waste does not include a reference to the sorting of waste.

(8) In this clause—

border crossing to a State or Territory means any part of a road (within the meaning of *Road Transport Act 2013*) that is at the boundary between New South Wales and the other State or Territory.

premises of origin of waste means the premises at which the waste was generated or, if those premises cannot be reasonably determined—

(a) any premises from which it can be established that the waste was transported by motor vehicle, or

(b) in a case where there is more than one premises from which it can be established that the waste was transported by motor vehicle—the first of those premises.

transport waste includes cause or permit waste to be transported.

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

72 Other requirements applying to transportation in course of business (cf clause 49(d)-(g) and (h)(i) and (iii) of 2005 Reg)

(1) A person who, when acting in the course of employment or in the course of business, transports waste must ensure that—

(a) the following are carried in any vehicle used to transport the waste—

- (i) a copy of any environment protection licence required to authorise the transportation of the waste,
 - (ii) a spill kit that is appropriate for the type of waste being transported, and
- (b) incompatible wastes are not transported together, and
- (c) any material that, when it is collected for transportation, has been segregated for recycling is not mixed with other waste in the course of transportation, and
- (d) any liquid waste that, when it is collected for transportation, has not been mixed with other waste is not mixed with other waste in the course of transportation.
- (2) A person who, in the course of business, transports liquid waste must ensure that the waste is 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.

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

73 Requirement applying to vehicles transporting waste to which Part 4 applies (cf clause 49(h)(ii) of 2005 Reg)

A person who, when acting in the course of employment or in the course of business, transports waste to which Part 4 applies must ensure that any Guide set out in the yellow section of HB 76: 2010, *Dangerous Goods—Initial Emergency Response Guide* and applying to the waste concerned is carried in any vehicle used to transport the waste.

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

74 Condition of licence for transportation of liquid category 1 and category 2 trackable waste (cf clause 49A of 2005 Reg)

- (1) It is a condition of an environment protection licence authorising the transportation of trackable liquid waste that any such waste that, when it is collected for transportation, has not been mixed with other waste is not mixed with other waste in the course of transportation.
- (2) For the purposes of this clause, **trackable liquid waste** means liquid waste that is category 1 trackable waste or category 2 trackable waste.
- (3) This clause does not apply in relation to the transportation of trackable liquid waste if—
- (a) the transportation of the waste is not a scheduled activity to which clause 48 of Schedule 1 to the Act applies, or

- (b) Part 4 of this Regulation does not apply to the transportation of that waste because of the operation of clause 41(2) or an exemption granted under Part 9.

75 Exemptions for certain licensees from transportation requirements relating to liquid waste (cf clause 51B(b) of 2005 Reg)

The EPA may grant an exemption under Part 9 from both clauses 72(1)(d) and 74.

76 Reporting on transportation of waste tyres solely within New South Wales

- (1) This clause applies to the transportation of waste tyres.
- (2) However, this clause does not apply to any of the following—
 - (a) the transportation of a load of waste tyres that have a total weight of less than 200 kilograms (unless the load contains at least 20 tyres),
 - (b) the transportation of waste tyres if Part 4 applies to the transportation,
 - (c) the transportation of waste tyres in an emergency to protect human health, the environment or property,
 - (d) the transportation of waste tyres that commenced before 1 July 2015.
- (3) A consignor of a load of waste tyres must cause the following information to be given to the EPA (in the prescribed form and manner) before the transportation of the load commences—
 - (a) the name, address and contact details of the consignor,
 - (b) the name, address and contact details of the premises from which the load is proposed to be transported (if different from the name, address and contact details referred to in paragraph (a)),
 - (c) the date on which it is proposed that the transportation commence,
 - (d) the name, address and contact details of the premises to which the waste tyres are proposed to be transported,
 - (e) the weight (in kilograms) of waste tyres in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
 - (f) the number of tyres in the load if the weight of the load is less than 200 kilograms,
 - (g) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (4) The consignor of a load of waste tyres must cause the following information to be given to the transporter of the load (in the prescribed form and manner) before the transportation of the load commences—

- (a) the unique consignment code issued by the EPA in relation to that load, and
 - (b) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (5) If the premises to which the load is delivered (the **receiving premises**) are not the same as the premises specified by the consignor under subclause (3)(d), the transporter causing the delivery must ensure that the EPA is given the name, address and contact details of the receiving premises (in the prescribed form and manner) within 24 hours after the delivery.
- (6) The transporter of a load of waste tyres must ensure that the occupier of any premises to which the transporter causes the load to be delivered is given the following information (in the prescribed form and manner) no later than on delivery—
- (a) the unique consignment code issued by the EPA in relation to that load, and
 - (b) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (7) The occupier of any premises to which a load of waste tyres is delivered must cause the EPA to be given the following information (in the prescribed form and manner) within 3 days after the delivery—
- (a) the date and time of delivery,
 - (b) the weight (in kilograms) of waste tyres in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
 - (c) the number of tyres in the load if the weight of the load is less than 200 kilograms,
 - (d) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (8) The EPA may grant an exemption under Part 9 from the whole of, or any provision within, this clause.
- (9) A reference in this clause to the **prescribed form and manner** in which information is to be given is a reference to the form and manner in which the Asbestos and Waste Tyres Guidelines specify the information is to be given.
- (10) In this clause—

Asbestos and Waste Tyres Guidelines means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).

Note—

A copy of the guidelines is available on the EPA's website (www.epa.nsw.gov.au).

consignor, in relation to the transportation of waste tyres, means—

- (a) in the case of waste tyres that are transported from a waste facility—the occupier

of the waste facility, or

(b) in any other case—any person who is the consignor of the waste tyres.

transporter of waste tyres means—

(a) in the case of waste tyres that are transported in the course of business—the person who carries on the business, or

(b) in any other case—any individual who carries out the transportation.

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

Part 7 Transportation and management of asbestos waste

Note—

Asbestos waste is defined in Part 3 of Schedule 1 to the Act.

77 Definitions (cf clause 42(6) of 2005 Reg)

In this Part—

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.

78 General requirements applying to transportation of asbestos waste

- (1) A person who transports asbestos waste must ensure that any part of any vehicle in which the person transports the waste is covered, and leak-proof, during its transportation.
- (2) A person who transports bonded asbestos material must ensure that it is securely packaged during its transportation.
- (3) A person who transports friable asbestos material must ensure that it is in a sealed container during its transportation.
- (4) A person who transports asbestos waste (other than bonded asbestos material that is securely packaged or friable asbestos material that is in a sealed container) must ensure that it is wetted down during its transportation.

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

79 Reporting on transportation of asbestos waste solely within New South Wales

- (1) This clause applies to the transportation of asbestos waste.
- (2) However, this clause does not apply to any of the following—
 - (a) the transportation of less than 100 kilograms of asbestos waste, or of less than 10 square metres of asbestos waste that is asbestos sheeting, in any single load,
 - (b) the transportation of asbestos waste if Part 4 applies to the transportation,
 - (c) the transportation of asbestos waste in an emergency to protect human health, the environment or property,
 - (d) the transportation of asbestos waste that commenced before 1 July 2015.
- (3) The transporter of a load of asbestos waste must cause the following information to be given to the EPA (in the prescribed form and manner) before the transportation of the load commences—
 - (a) the address of the site at which the asbestos waste has been generated (by its removal from the site), if known to the transporter,
 - (b) the name, address and contact details of the premises from which the load is proposed to be transported,
 - (c) the date on which it is proposed that the transportation commence,
 - (d) the name, address and contact details of the premises to which the waste is proposed to be transported,
 - (e) the approximate weight (in kilograms) of each class of asbestos waste in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
 - (f) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (4) If the premises to which the load is delivered (the **receiving premises**) are not the same as the premises specified under subclause (3)(d), the transporter causing the delivery must ensure that the EPA is given the name, address and contact details of the receiving premises (in the prescribed form and manner) within 24 hours after the delivery.
- (5) The transporter of a load of asbestos waste must ensure that the occupier of any premises to which the transporter causes the load to be delivered is given the following information (in the prescribed form and manner) no later than on delivery—
 - (a) the unique consignment code issued by the EPA in relation to that load,

- (b) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (6) The occupier of a waste facility to which a load of asbestos waste is delivered must cause the EPA to be given the following information (in the prescribed form and manner) within 3 days after the delivery—
- (a) the date and time of delivery,
- (b) the approximate weight (in kilograms) of each class of asbestos waste in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
- (c) any other information specified in the Asbestos and Waste Tyres Guidelines.
- (7) The EPA may grant an exemption under Part 9 from the whole of, or any provision within, this clause.
- (8) A reference in this clause to the **prescribed form and manner** in which information is to be given is a reference to the form and manner in which the Asbestos and Waste Tyres Guidelines specify the information is to be given.
- (9) For the purposes of this clause, the classes of asbestos waste are as follows—
- (a) bonded asbestos material,
- (b) friable asbestos material.
- (10) In this clause—

Asbestos and Waste Tyres Guidelines means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).

Note—

A copy of the guidelines is available on the EPA's website (www.epa.nsw.gov.au).

transporter of asbestos waste means—

- (a) in the case of asbestos waste that is transported in the course of business—the person who carries on the business, or
- (b) in any other case—any individual who carries out the transportation.

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

80 Disposal of asbestos waste (cf clause 42(4) of 2005 Reg)

- (1) (Repealed)

- (2) When a person delivers asbestos waste to a landfill site, the person must inform the occupier of the landfill site that the waste contains asbestos.
- (3) The following persons must ensure that when a person unloads or disposes of asbestos waste at a landfill site (regardless of whether the site is subject to an environment protection licence) no dust is generated from the waste—
 - (a) the person unloading or disposing of the asbestos waste,
 - (b) the occupier of the landfill site.
- (4) Subject to any alternative cover conditions provided in an environment protection licence held by the occupier or approved in writing by the EPA, the occupier of a landfill site must ensure that asbestos waste disposed of at the site is covered with virgin excavated natural material—
 - (a) initially (at the time of disposal), to a depth of at least 0.15 metre, and
 - (b) at the end of each day's operation, to a depth of at least 0.5 metre, and
 - (c) finally, to a depth of at least 1 metre (in the case of bonded asbestos material or asbestos-contaminated soils) or 3 metres (in the case of friable asbestos material) beneath the final land surface of the landfill site.
- (5) In this clause, **landfill site** means a landfill site that can lawfully receive asbestos waste.

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

81 (Repealed)

Part 8 Recycling of consumer packaging

(cf Part 5B of 2005 Reg)

82 Definitions (cf clause 46G(1) and (2)(a) of 2005 Reg)

In this Part—

Australian Packaging Covenant means—

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

brand owner—see clause 83.

recover, in relation to materials, means 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 name contained in Schedule 2 to the Australian Packaging Covenant (except as provided by clause 90).

83 Brand owners of products (cf clause 46H of 2005 Reg)

- (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 no person in Australia satisfies subclause (1) in relation to a product, 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 no person in Australia satisfies subclause (1) or (2) in relation to a product, 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 no person in Australia satisfies subclause (1), (2) or (3) in relation to a product, 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 or not registered in Australia.

84 Application of this Part (cf clause 46I of 2005 Reg)

- (1) This Part applies to a person who is—
 - (a) a brand owner of consumer products, or
 - (b) a retailer who provides plastic bags to consumers for transporting consumer products from the retailer.
- (2) This Part does not apply to a person if—
 - (a) the person 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) that the EPA is satisfied will produce equivalent outcomes to the Australian Packaging Covenant, or
 - (b) the person has a gross annual income in Australia of less than \$5 million.
- (3) For the purposes of this clause, a person is taken not to be complying with the Australian Packaging Covenant if—
 - (a) the person is a signatory to the Covenant, and
 - (b) the EPA has been notified by the Australian Packaging Covenant Council (the **Covenant Council**) that the person no longer has the benefit of being a signatory to the Covenant, and
 - (c) since receiving that notification, the EPA has not received advice from the Covenant Council to the effect that the Covenant Council is satisfied that the person is a compliant signatory.

85 Packaging for which brand owners and retailers responsible (cf definition of “person’s packaging” (in clause 46G(1)) and clause 46I(2) and (3) of 2005 Reg)

For the purposes of this Part, a person who is a brand owner or retailer of consumer products is responsible for the following packaging—

- (a) in the case of a brand owner—all packaging made of any material (or any combination of materials) for containing, protecting, marketing and handling the products (including any packaging materials used to transport the products to a retailer, but not including packaging provided by a retailer to a consumer for transporting the products from the retailer), or
- (b) in the case of a retailer—plastic bags that the retailer provides to consumers for transporting the products from the retailer (whether or not the retailer is a brand owner of any of the products).

86 EPA is to set targets for recovery of materials and review of packaging design (cf clause 46J of 2005 Reg)

- (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 a target under this clause 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), a target under this clause may be expressed in the

form of a percentage of the materials used.

87 Requirements to recover, re-use and recycle materials and review packaging design in accordance with targets (cf clause 46K of 2005 Reg)

- (1) A person to whom this Part applies must ensure—
- (a) that the materials used in packaging for which the person is responsible are recovered in accordance with the targets for recovery of those materials set by the EPA under clause 86, 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 outside of Australia, and
 - (c) that consumers are given adequate information to enable them to deal with the materials used in the 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 the design of the packaging is reviewed in accordance with the targets that the EPA sets under clause 86.

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

- (2) The requirement in subclause (1)(a) to recover materials used in packaging for which a person is responsible 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 packaging for which the person is responsible.

88 Requirement to prepare waste action plan (cf clause 46L of 2005 Reg)

- (1) A person to whom this Part applies must prepare a draft plan (a **draft waste action plan**), in accordance with this clause, and submit the draft plan to the EPA, within one month after the EPA gives written notice to the person that the person is required to prepare and submit a draft waste action plan.

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

- (2) A draft 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 packaging for

- which the person is responsible, and
- (b) how the person will ensure compliance with clause 87, including—
 - (i) targets for the recovery of the materials used in the packaging and for reviewing the design of that packaging, 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 draft waste action plan is to be in any form, and is to contain any matter or particular relating to the following, that the EPA may specify by written notice to the person—
- (a) the use, recovery, re-use or recycling of the materials used in the packaging for which the person is responsible,
 - (b) the review of that packaging's design,
 - (c) the reduction in packaging litter.
- (4) The EPA may, by written notice to a person who has submitted a draft waste action plan—
- (a) direct the person to amend the draft plan and to resubmit it within the period specified in the notice if the EPA reasonably believes that the draft plan is not sufficient to ensure—
 - (i) that the person will comply with clause 87, or
 - (ii) a continuous reduction in the number of packaging items in the litter stream, or
 - (b) approve the draft plan as the person's waste action plan with effect from the date specified in the notice.
- (5) The EPA may, by written notice to a person who has a waste action plan, direct the person to amend the plan, and submit the amended plan to the EPA within the period specified in the notice, if the EPA reasonably believes that the plan is not sufficient to ensure—
- (a) that the person will comply with clause 87, or
 - (b) a continuous reduction in the number of packaging items in the litter stream.
- (6) A person must comply with a direction of the EPA given in accordance with this clause.

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

- (7) To the extent that a waste action plan relates to a person's obligations under clause 87, a failure to comply with the plan is evidence of a failure to comply with that clause.

89 Record keeping (cf clause 46M of 2005 Reg)

- (1) A person to whom this Part applies must keep records that set out the following in relation to each financial year—
- (a) for each packaging material used by the person in packaging for which the person is responsible—
 - (i) the total weight of material used by material type, and
 - (ii) the number of units of packaging by unit and material type, and
 - (iii) the arrangements that are in place to ensure that material is recovered, including details of any agreement with a third party for the recovery of material, and
 - (iv) the total weight of material recovered by material type, and
 - (v) the total weight of recovered material re-used or recycled in Australia by material type, and
 - (vi) the total weight of recovered material re-used or recycled outside of Australia by material type, and
 - (vii) the total amount of embedded energy recovered (in kilojoules), and
 - (viii) the total weight of recovered material disposed of to landfill, and
 - (ix) how recovered material is used, and
 - (x) how consumers have been advised as to how packaging is to be recovered,
 - (b) the percentages of existing and new packaging for which the person is responsible that is reviewed using the Sustainable Packaging Guidelines, and any improvements made to the design of that packaging,
 - (c) any measures that the person takes to ensure a continuous reduction in the number of packaging items in the litter stream.
- (2) A person who is required to keep records under this clause must—
- (a) ensure that those records are retained for at least 5 years following the financial year to which they relate, and

(b) make those records available for inspection and copying by an authorised officer on request.

(3) In this clause—

financial year, in relation to the keeping and retention of records by a person, means—

(a) in the case of a person that is a company—a financial year of the company, or

(b) in any other case—the period of 12 months commencing on 1 July in any year.

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

90 EPA may approve alternative to Sustainable Packaging Guidelines (cf clause 49G(2)(b) of 2005 Reg)

(1) The EPA may give written approval to any person to whom this Part applies to use a set of guidelines, for the purposes of this Part, as an alternative to the Sustainable Packaging Guidelines.

(2) The EPA may give an approval under this clause only if the EPA is satisfied that, if the person uses the alternative set of guidelines, the person will achieve outcomes equivalent to those that the person would achieve by using the Sustainable Packaging Guidelines.

(3) A reference in this Part (other than in this clause) to the Sustainable Packaging Guidelines, in relation to a person who is given an approval under this clause, is taken to be a reference to the alternative set of guidelines to which the approval relates.

Part 8A Construction and demolition waste facilities

90A Definitions

In this Part—

construction includes demolition, repair or alteration.

construction and demolition waste facility—see clause 90B.

construction waste means—

(a) material that results from the construction of buildings or infrastructure (such as roads, tunnels, airports and infrastructure for sewage, water, electricity and telecommunications) and includes materials such as—

(i) bricks, concrete, paper, plastics, glass and metal, and

(ii) timber, including unsegregated timber, that may contain timber treated with

chemicals, and

- (iii) soil or other excavated material (but not virgin excavated natural material within the meaning of Schedule 1 to the Act), and

Note—

Construction waste includes all **building and demolition waste** within the meaning of Schedule 1 to the Act.

- (b) material processed from any material to which paragraph (a) applies,
- (c) waste that contains any material to which paragraph (a) or (b) applies.

Standards for managing construction waste in NSW means the *Standards for managing construction waste in NSW* published in the Gazette by the EPA and as amended or replaced from time to time.

90B Construction and demolition waste facility

- (1) A scheduled waste facility that is not solely a scheduled waste disposal facility is a **construction and demolition waste facility** for the purposes of this Part if—
 - (a) it is in the metropolitan levy area and it receives 6,000 tonnes or more of construction waste in any 12-month period, or
 - (b) it is in the regional levy area and it receives 6,000 tonnes or more of construction waste from the metropolitan levy area in any 12-month period.
- (2) A facility that is a construction and demolition waste facility continues to be a construction and demolition waste facility for the remaining period of its environment protection licence even if it ceases to receive construction waste.

90C Compliance with standards

- (1) It is a condition of an environment protection licence for a scheduled waste facility that is a construction and demolition waste facility that the requirements set out in the *Standards for managing construction waste in NSW* are complied with at the facility.
- (2) The EPA may require, by notice in writing, that the holder of an environment protection licence for a scheduled waste facility that is a construction and demolition waste facility—
 - (a) engage a person (approved by the EPA) to conduct an audit of, and to prepare a report on, the holder's compliance with subclause (1), and
 - (b) ensure that the audit and report are completed and a copy of the report is provided to the EPA.
- (3) It is a condition of an environment protection licence for a scheduled waste facility

that is a construction and demolition waste facility that the requirements of any notice given to the holder under this clause are complied with within the time (if any) specified in the notice.

90D Exemptions

The EPA may grant an exemption under Part 9 from any provisions of this Part.

Part 9 Exemptions from provisions of Act and Regulation

91 General provisions relating to exemptions (cf clause 51 of 2005 Reg)

- (1) The EPA may, if authorised to do so by another provision of this Regulation, grant an exemption under this clause from specified provisions of the Act or this Regulation.
- (2) The EPA may grant an exemption to any person or class of persons.
- (3) Without limiting subclause (2), any exemption may be granted to any person or class of persons by reference to—
 - (a) any premises or class of premises, or
 - (b) any area or class of areas, or
 - (c) any activity or class of activities, or
 - (d) any other matter or thing or class of matters or things.
- (4) The EPA may grant an exemption—
 - (a) on its own initiative, or
 - (b) on the application of a person to whom the exemption applies, or
 - (c) on the application of a person belonging to a class of persons to which the exemption applies, or
 - (d) in the case of an exemption authorised to be granted by clause 92—on the application of a person who—
 - (i) supplies, or intends to supply, waste to a person to whom the exemption applies, or
 - (ii) supplies, or intends to supply, waste to a person belonging to a class of persons to which the exemption applies, or
 - (iii) supplies, or intends to supply, waste to a person or class of persons for resupply to another person to whom the exemption applies, or
 - (iv) supplies, or intends to supply, waste to a person or class of persons for

resupply to another person belonging to a class of persons to which the exemption applies.

- (5) An application under this clause must—
 - (a) be in the approved form, and
 - (b) be accompanied by the fee (if any) that the EPA determines, and
 - (c) be accompanied by any information, documents or evidence that the EPA requires for the purposes of determining whether the exemption should be granted.
- (6) An exemption granted under this clause is effected as follows—
 - (a) in the case of an exemption granted to specified persons only—by notice published in the Gazette or by written notice given to those persons,
 - (b) in any other case—by notice published in the Gazette.
- (7) An exemption granted under this clause takes effect—
 - (a) on the date on which the notice is published or given in accordance with this clause, or
 - (b) if a later date is specified in the notice—the later date.
- (8) An exemption granted under this clause may be unconditional or may be subject to conditions specified in the notice.
- (9) The EPA may vary or revoke an exemption granted under this clause by a further notice published or given in accordance with this clause.

92 Exemptions relating to resource recovery (cf clauses 46 and 51A of 2005 Reg)

- (1) This clause applies to the following waste—
 - (a) waste (including any processed, recycled, re-used or recovered substance that is produced wholly or partly from waste) that is applied, or is intended to be applied, to land as follows—
 - (i) by spraying, spreading or depositing it on the land,
 - (ii) by ploughing, injecting or mixing it into the land,
 - (iii) by filling, raising, reclaiming or contouring the land,
 - (b) waste (including any processed, recycled, re-used or recovered substance that is produced wholly or partly from waste) that is used, or is intended to be used, as a fuel,
 - (c) waste used, or intended to be used, in connection with a process of thermal

treatment.

- (2) The EPA may grant an exemption under clause 91 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 4 and clauses 109, 110 and 114 of this Regulation.
- (3) Without limiting subclause (2), the EPA may also grant an exemption under clause 91 from section 142A of the Act, in relation to the application to land (as referred to in subclause (1)(a)) of waste that is produced wholly or partly from restricted solid waste or waste tyres.
- (4) However, the EPA may not grant an exemption in relation to land pollution within the meaning of paragraph (a) of the definition of **land pollution** in the Dictionary to the Act.

93 Supply of waste to which resource recovery exemptions apply

- (1) The EPA may, by order, impose requirements on a specified person (or a specified class of persons) in relation to the supply by the person (or any person belonging to the specified class) of waste (**resource recovery waste**) to which a resource recovery exemption applies.
- (2) An order can only be issued under this clause in relation to the supply by a person of—
 - (a) resource recovery waste that has been generated, processed or recovered by the person, or
 - (b) waste that will become resource recovery waste.
- (3) An order under this clause is effected as follows—
 - (a) in the case of an order applying to specified persons only—by written notice given to those persons, or
 - (b) in any other case—by notice published in the Gazette.
- (4) An order under this clause takes effect—
 - (a) on the date on which the order is given or published in accordance with this clause, or

(b) if a later date is specified in the notice—the later date.

- (5) The EPA may vary or revoke an order granted under this clause by a further notice published or given in accordance with this clause.
- (6) An order under this clause is revoked on the date on which the resource recovery exemption to which it applies is revoked.
- (7) A person must comply with any requirements imposed on the person (or a class of persons to which the person belongs), in relation to the supply of resource recovery waste, by an order under this clause.

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

94 Record keeping

- (1) A person who is required by an exemption granted, or an order made, under this Part to record information must comply with that requirement and must—
 - (a) ensure that each of the records is retained for at least 6 years after the record is made, and
 - (b) make any of the records available for inspection and copying 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.

- (2) The variation or revocation of an exemption granted, or an order made, under this Part does not affect the operation of subclause (1) in relation to information that the exemption or order required to be recorded prior to the variation or revocation.
- (3) Nothing in this clause—
 - (a) limits the conditions that may be imposed on any exemption granted under this Part, or
 - (b) limits the requirements that may be imposed by an order made under this Part or affects the operation of clause 93(7).

95 Requirement to provide test results under resource recovery exemption or order

- (1) A person who is required by a resource recovery exemption, or an order made under this Part, to provide to another person any information concerning test results relating to waste to which the exemption or order applies must provide that information to the other person—
 - (a) within the period specified in the exemption or order, or

(b) on the request of the other person.

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

Note—

Part 7.3 of the Act confers powers on the EPA to require a person to provide information to it.

- (2) The variation or revocation of a resource recovery exemption, or an order made under this Part, does not affect the operation of subclause (1) in relation to information that the exemption or order required prior to the variation or revocation.
- (3) However, the requirement under subclause (1) ceases to apply in relation to an exemption or order 12 months after the exemption or order is revoked.
- (4) Nothing in this clause—
 - (a) limits the conditions that may be imposed on any exemption granted under this Part, or
 - (b) limits the requirements that may be imposed by an order made under this Part or affects the operation of clause 93(7).

96 Defence to offences relating to resource recovery orders

It is a defence in any proceedings for an offence against clause 93, 94 or 95, in relation to the alleged supply of waste by a defendant, if the defendant establishes that, at the time of the supply of the waste, the defendant had reasonable grounds to believe that the person supplied—

- (a) did not intend to use the waste for an activity carried out in accordance with the exemption, and
- (b) did not intend to resupply the waste to another person for an activity carried out (whether or not by the other person) in accordance with the exemption.

Part 10 Classification of waste containing immobilised contaminants

97 Definitions

(1) In this Part—

designated waste means waste that has been, or is purported to have been, classified in accordance with an immobilised contaminants approval.

designated waste certificate—see clause 106.

immobilised contaminants approval—see clause 98.

- (2) A reference in this Part to a person to whom an immobilised contaminants approval is granted includes a reference to a person who belongs to a class of persons to which an immobilised contaminants approval is granted.

98 General effect of immobilised contaminants approval (cf clause 50 of 2005 Reg)

- (1) The EPA may grant an approval (an ***immobilised contaminants approval***) authorising waste of a kind to which it applies to be classified in accordance with the approval.

Note—

See clause 49(2) of Schedule 1 to the Act.

- (2) In particular, an immobilised contaminants approval authorises the person to whom the approval is granted to classify the waste after—
- (a) any specified techniques for immobilising contaminants in the waste have been applied, and
 - (b) any specified tests to determine the extent to which those contaminants are immobilised have been carried out.
- (3) The authorisation conferred by an immobilised contaminants approval to classify waste applies only in respect of any amount of waste that is specified in the approval (if the approval restricts the amount of waste to which it applies and is granted to a specified person).

99 Approval may be granted on application or on EPA's initiative

- (1) The EPA may grant an immobilised contaminants approval—
- (a) on its own initiative, or
 - (b) on the application of a person to which the approval applies, or
 - (c) on the application of a person belonging to a class of persons to which the approval applies.
- (2) An application under this clause must—
- (a) be in the approved form, and
 - (b) be accompanied by the fee (if any) that the EPA determines, and
 - (c) identify the kind of waste in relation to which the application is made, and
 - (d) identify the contaminants that are proposed to be immobilised (or that the applicant contends are sufficiently immobilised for the purposes of any intended disposal, storage or use of the waste), and

- (e) identify any techniques that the applicant proposes to apply to immobilise the contaminants, and
- (f) be accompanied by any evidence that the EPA requires for the purposes of ascertaining whether or not the identified contaminants in the waste—
 - (i) will be immobilised (or sufficiently immobilised) after any such techniques are applied for the purposes of any intended disposal, storage or use of the waste, and
 - (ii) will remain immobilised (or sufficiently immobilised) after any intended disposal, storage or use of the waste, and
- (g) be accompanied by any other information, documents or evidence that the EPA requires for the purposes of determining whether or not the approval should be granted.

100 Content of immobilised contaminants approval

- (1) An immobilised contaminants approval must specify the following—
 - (a) the persons (or class of persons) to whom the approval is granted,
 - (b) the kind of waste and the contaminants in any such waste to which the approval applies,
 - (c) the techniques (if any) that are to be applied for immobilising those contaminants, including any standard that must be achieved in applying, or as a result of applying, those techniques,
 - (d) the method to be applied in classifying waste under the approval (following the application of any such techniques), including the tests (if any) that are to be carried out for the purposes of determining the extent to which the specified contaminants are immobilised,
 - (e) any restriction on the quantity of waste to which the approval applies.
- (2) An immobilised contaminants approval is subject to any conditions that are imposed on the approval by the EPA.
- (3) Without limiting subclause (2), those conditions may relate to any of the following—
 - (a) the waste facilities (or class of waste facilities) to which the waste may be taken for disposal, storage or use,
 - (b) any particular purposes for which the waste may be used, or supplied for use, if the waste is determined, pursuant to the approval, to be of a specified classification,

- (c) the notification of certain matters to the EPA,
- (d) record keeping.

101 How and when approval takes effect

- (1) An immobilised contaminants approval is effected as follows—
 - (a) in the case of an approval granted to a specified person that is subject to a condition that authorises the waste to be taken for disposal, storage or use to a specified waste facility only—by written notice given to the specified person,
 - (b) in any other case—by notice published in the Gazette.
- (2) An immobilised contaminants approval takes effect—
 - (a) on the date on which the notice is given, or published, in accordance with this clause, or
 - (b) if a later date is specified in the notice—the later date.

102 Variation or revocation of approval

The EPA may vary or revoke an immobilised contaminants approval by a further notice published or given in accordance with clause 101.

103 Duration of approval

An immobilised contaminants approval remains in force—

- (a) unless sooner revoked, for any period specified in the approval, or
- (b) until it is revoked if no period is specified in the approval.

104 Compliance with immobilised contaminants approval

- (1) Any person to whom an immobilised contaminants approval is granted may classify waste of a kind to which the approval applies in accordance with the method specified in the approval or clause 49(1) of Schedule 1 to the Act.
- (2) Any person to whom an immobilised contaminants approval is granted who classifies, or purports to classify, waste of a kind to which the approval applies in accordance with the method specified in the approval must comply with any conditions specified in the approval.

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

105 Record keeping

- (1) Any person to whom an immobilised contaminants approval is granted who is required

by the approval to record information must comply with that requirement and must—

- (a) ensure that each of the records is retained for at least 6 years after the record is made, and
- (b) make any of the records available for inspection and copying 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.

- (2) The variation or revocation of an immobilised contaminants approval under this Part does not affect the operation of subclause (1) in relation to information that the approval required to be recorded prior to the variation or revocation.
- (3) Nothing in this clause limits the conditions that may be imposed on any immobilised contaminants approval under clause 100.

106 Provision of certificates to occupiers of waste facilities

- (1) A person to whom an immobilised contaminants approval applies who causes or permits waste classified in accordance with the approval to be taken to a waste facility must cause the occupier of the facility to be given (in any approved manner) a designated waste certificate in relation to the waste.

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

- (2) A **designated waste certificate** is a certificate (in the approved form) by or on behalf of the person—
 - (a) to the effect that the waste has been classified in accordance with an immobilised contaminants approval and that the approval authorises, or does not prohibit, the waste being taken to the facility for disposal or storage or for the use concerned, and
 - (b) containing particulars identifying the immobilised contaminants approval concerned, and
 - (c) in the case of designated waste to which an order under clause 108 applies that has been effected by notice published in the Gazette—containing particulars identifying the order concerned.

107 Disposing of, storing or using designated waste

- (1) An occupier of a waste facility must ensure that designated waste is not received at the facility for disposal, storage or use at the facility unless the immobilised contaminants approval applying to the waste authorises, or does not prohibit, the

waste being taken to the facility for disposal or storage or for the use concerned (as the case may be).

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

- (2) It is a defence in any proceedings for an offence against this clause if the defendant establishes that (at the time of the alleged offence)—
- (a) the waste facility was a lawful waste facility, and
 - (b) the defendant was not given or had not received a designated waste certificate in relation to the waste and had no reason to believe that the waste was designated waste.

108 Other requirements applying to receivers of designated waste

- (1) The EPA may, by order, impose requirements on an occupier of a specified waste facility (or any occupier of a waste facility of a specified class) that relate to the disposal, storage or use of designated waste at the specified waste facility (or any waste facility of the specified class).
- (2) An order under this clause is effected as follows—
- (a) in the case of an order applying to a specified waste facility only—by written notice given to the occupier of the facility, or
 - (b) in any other case—by notice published in the Gazette.
- (3) An order under this clause takes effect—
- (a) on the date on which the order is given or published in accordance with this clause, or
 - (b) if a later date is specified in the notice—the later date.
- (4) The EPA may vary or revoke an order granted under this clause by a further notice published or given in accordance with this clause.
- (5) The occupier of any waste facility at which designated waste is received for disposal, storage or use must ensure that any requirements imposed by such an order that relate to the disposal, storage or use at the facility (or at any waste facility of a class to which the facility belongs) are complied with at the facility.

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

- (6) It is a defence in any proceedings for an offence against this clause if the defendant establishes that, at the time of the alleged offence, the defendant—

- (a) was not given or had not received a designated waste certificate in relation to the waste, and
- (b) had no reason to believe that the waste was designated waste.

Part 11 Miscellaneous

109 Reporting requirements for non-paying waste facilities, and for landfill sites outside regulated area (cf clause 47(1), (2), (4) and (5) of 2005 Reg)

- (1) This clause applies to any of the following—
 - (a) any occupier of a scheduled waste facility who is not required to pay contributions under section 88 of the Act because of an exemption under Division 5 of Part 2,
 - (b) any occupier of a waste facility that is a landfill site who is not required to pay contributions under section 88 of the Act because an environment protection licence is not required for the facility,
 - (c) any occupier of a waste facility that is a landfill site located outside the regulated area.
- (2) However, this clause does not apply to the occupier of any landfill site that receives virgin excavated natural material only (and not any other type of waste).
- (3) The EPA may, by written notice to the occupier of a waste facility to which this clause applies, require the occupier to provide the approved particulars to the EPA. The approved particulars must be provided to the EPA, in the approved form, within 60 days after receiving the notice.
- (4) The occupier of a waste facility to which this clause applies must provide to the EPA a report, in the approved form, in relation to waste received in each financial year. The occupier must provide the report within 60 days after the end of the financial year to which the report relates.
- (5) In this clause—

financial year means the period of 12 months commencing on 1 July in any year.

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

110 EPA to be notified of newly established landfill sites where licence not required (cf clause 47(1)–(3) of 2005 Reg)

- (1) An occupier of a newly established landfill site who is not required to hold an environment protection licence in respect of the site must, before the site commences to be operated as a landfill site, notify the EPA of the following particulars—

- (a) the location of the landfill site,
- (b) the name and address of the occupier.

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 the occupier of any landfill site that receives virgin excavated natural material only (and not any other type of waste).

110A Offence to exhume waste from landfill site

- (1) The occupier of land that is or was a landfill site must ensure that waste is not exhumed from the land.

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

- (2) This clause does not affect the operation of a scheduled waste facility that is operating on a former landfill site if the landfill site is closed and capped and no waste is removed from beneath that cap.
- (3) This clause does not apply if the waste is exhumed as a consequence of works authorised in writing by the EPA, or authorised by the environment protection licence for the facility, and notified to the EPA in writing at least 2 days (or such greater period as may be specified in the written authorisation of the EPA or the environment protection licence) before the works commence.
- (4) It is a defence in any proceedings for an offence against this clause if the defendant establishes that—
 - (a) the waste was exhumed in an emergency to protect human health or the environment, or
 - (b) the waste was exhumed in accordance with a written direction of the EPA.

111 Defence to offence of polluting land at unlicensed landfill site

- (1) The defence provided for in section 142E of the Act (relating to the introduction of a substance into or onto land that is an unlicensed landfill site) is only available to the occupier of an unlicensed landfill site if, when the substance was introduced—
 - (a) particulars of the location of the landfill site, and of the name and address of the occupier, had been notified to the EPA, and
 - (b) there was lawful authority to use the land as a landfill site, and
 - (c) the landfill site was being operated in accordance with the operating requirements, and

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

(2) The **operating requirements**, in relation to a landfill site, are as follows—

- (a) all reasonable steps are to be taken to minimise the emission of any offensive odour or offensive noise beyond the boundaries of a landfill site,
- (b) all reasonable steps are to be taken to avoid discharges from the landfill site causing water pollution,
- (c) all reasonable steps are to be taken to ensure that any plant at the landfill site that is used for the purposes of disposing of, or moving or covering, waste is properly maintained so as to avoid land pollution,
- (d) all reasonable steps are to be taken to ensure that any plant at the landfill site that is designed to control or prevent land pollution at the site (including any gas collection system and any leachate collection system) is maintained in an efficient condition,
- (e) all reasonable steps are to be taken to secure the site against uncontrolled public access (for example, by the provision of fencing and other security measures),
- (f) all reasonable steps are to be taken to minimise the emission of dust beyond the boundaries of the landfill site,
- (g) all reasonable steps are to be taken to minimise the tracking of dust or mud from the site on to any public road providing access to the site,
- (h) all reasonable steps are to be taken to minimise the risk of fire at the landfill site,
- (i) if the substance is asbestos waste—the requirements of clause 80 relating to covering that waste are to be complied with,
- (j) if the substance is clinical or related waste—the requirements of clause 113 relating to the disposal of that waste at a landfill site are to be complied with.

112 Requirement relating to storage of waste generally (cf clause 48 of 2005 Reg)

A person who stores waste on premises (whether or not the waste was generated 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.

113 Special requirements relating to clinical and related waste (cf clauses 43 and 51B(a) of

2005 Reg)

- (1) A person who collects waste for disposal at a waste facility that is a landfill site, and who knows (or ought reasonably to know) that the waste includes clinical and related waste, must ensure that when collecting the waste and for so long as it remains in the person's possession the waste is stored in a container or bag, and labelled, in accordance with the core requirements.

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

- (2) The **core requirements** for storage and labelling of clinical and related waste are as follows—
- (a) any sharps waste—
- (i) must be contained in a rigid-walled container that satisfies the applicable requirements of Australian and New Zealand Standard AS/NZS 3816:1998, *Management of clinical and related wastes (AS/NZS 3816:1998)*, and
 - (ii) must, as far as practicable, be stored separately from other waste,
- (b) any clinical and related waste that is not sharps waste (and not mixed with sharps waste) must be contained in a rigid-walled container, or a bag, that satisfies any applicable requirements of AS/NZS 3816:1998,
- (c) the container or bag in which the waste is contained must be labelled in accordance with AS/NZS 3816:1998.
- (3) It is a condition of an environment protection licence that authorises the transportation of clinical and related waste that—
- (a) during transportation—
- (i) the waste is stored in a container or bag, and labelled, in accordance with the core requirements, and
 - (ii) each container or bag of the waste is placed in a rigid container that is leak proof, shatter proof and washable and has a securely fitting lid to prevent spills, and
- (b) the waste is not transported in a vehicle having a waste compaction system, and
- (c) a spill kit is carried in any vehicle transporting the waste that conforms with the requirements set out in the Waste Management Guidelines for Health Care Facilities, and
- (d) when the waste is in the vehicle and the vehicle is unattended, the vehicle is securely locked and (except where the vehicle is a railway vehicle) parked in an

area that is secure and undercover.

- (4) The EPA may grant an exemption under Part 9 from subclause (3).
- (5) A person must not dispose of clinical and related waste at a waste facility that is a landfill site if the occupier of the facility does not hold an environment protection licence authorising the disposal of the waste, unless—
- (a) the waste facility is operated by a local authority and located outside the regulated area, and
 - (b) written approval of the local authority to the disposal of the waste has been obtained, and
 - (c) the waste has been generated outside the regulated area, and
 - (d) the waste does not contain any sharps waste, cytotoxic waste, radioactive waste or recognisable body parts, and
 - (e) the waste is stored in a container or bag, and labelled, in accordance with the core requirements, and
 - (f) the person disposes of the waste in amounts that do not exceed 40 kilograms at any time, and
 - (g) the person ensures that the waste is buried, or 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.

- (6) The occupier of any premises comprising a hospital, day procedure centre, pathology laboratory, mortuary or medical research facility where clinical and related waste is generated must—
- (a) ensure that there is a waste management plan, in respect of that waste, for the premises that is in accordance with the Waste Management Guidelines for Health Care Facilities, and
 - (b) designate an appropriate person or persons responsible for implementing and monitoring the plan, and
 - (c) ensure that the plan is retained on the premises, and
 - (d) make the plan available, on the request of the appropriate regulatory authority, for inspection and copying.

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

(7) In this clause—

Waste Management Guidelines for Health Care Facilities means the publication entitled *Waste Management Guidelines for Health Care Facilities* (ISBN 0 7313 4060 4), issued by NSW Health in August 1998.

114 Residue waste not to be applied to land used for growing vegetation (cf clauses 44 and 45 of 2005 Reg)

Note—

An exemption from this clause may be granted under Part 9.

(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 any 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 in any proceedings for an offence against this clause if the defendant 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 [Biosecurity Act 2015](#).

(3) A reference in this clause to applying waste to land includes a reference to—

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

(4) In this clause—

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.

115 Repeal and savings (cf clause 53 of 2005 Reg)

- (1) The *Protection of the Environment Operations (Waste) Regulation 2005* (**the 2005 Regulation**) is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the 2005 Regulation, had effect under that Regulation continues to have effect under this Regulation.
- (3) The EPA cannot grant the occupier of a scheduled waste facility an approval under clause 15, in relation to the use of waste for an operational purpose specified in any of the following items of the table to clause 15(1), if the waste was received at the facility before the commencement of this Regulation—
 - (a) item 2,
 - (b) item 6 (unless the operational purpose is a landfill gas collection system),
 - (c) item 7 (unless the waste consists of plastic sheeting),
 - (d) item 8 (unless the waste consists of virgin excavated material and the operational purpose is the placement of that material below the water table, in accordance with the conditions of an environment protection licence, to rehabilitate a sand mine).
- (4) An exemption granted under the 2005 Regulation that, immediately before the repeal of that Regulation, was in force—
 - (a) continues to have effect as if it were an exemption granted under Part 9 until it is revoked under that Part, and
 - (b) in the case of an exemption that was authorised to be granted by clause 51A of that Regulation—continues to have effect as if it were a resource recovery exemption until it is revoked under Part 9.
- (5) Nothing in subclause (4) limits the operation of subclause (2).

Schedule 1 Waste to which waste tracking requirements under Part 4 apply

(Clauses 3(1), 41(1), 61(1) and 65(2)(b))

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 that are referred to in this Part

Copper compounds

Cyanides (inorganic)

Cyanides (organic)/nitriles

Encapsulated, chemically-fixed, solidified or polymerised wastes that are referred to in this Part

Ethers

Filter cake contaminated with residues of substances that are referred to in this Part

Fire debris and fire washwaters

Fly ash, excluding fly ash generated from Australian coal fired power stations

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, excluding substances referred to in this Part or Part 2

Oxidising agents

Perchlorates

Phenols; phenol compounds, including chlorophenols

Phosphorus compounds, excluding mineral phosphates

Polychlorinated dibenzo-furan (any congener)

Polychlorinated dibenzo-p-dioxin (any congener)

Reactive chemicals

Reducing agents

Residues from industrial waste treatment/disposal operations

Selenium; selenium compounds

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

Surface active agents (surfactants), containing principally organic constituents and that 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 that 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

Encapsulated, chemically-fixed, solidified or polymerised wastes that are referred to in this Part

Filter cake contaminated with residues of substances that are referred to in this Part

Grease trap waste

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

Tannery wastes including leather dust, ash, sludges and flours

Tyres

Wool scouring wastes

Part 3 Characteristics of trackable wastes

Dangerous

| Goods Class (UN Class) | UN Code |
|-----------------------------------|----------------|
|-----------------------------------|----------------|

Explosive

| | | |
|---|----|--|
| 1 | H1 | An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings. |
|---|----|--|

| | | |
|-----|------|---|
| 3 | H3 | <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 degrees Celsius, open-cup test.</p> |
| 4.1 | H4.1 | <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> |
| 4.2 | H4.2 | <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> |
| 4.3 | H4.3 | <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> |
| 5.1 | H5.1 | <p>Oxidising</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to the combustion of other materials.</p> |
| 5.2 | H5.2 | <p>Organic peroxides</p> <p>Organic substances or wastes which contain the bivalent-O-O structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.</p> |
| 6.1 | H6.1 | <p>Poisonous (acute)</p> <p>Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.</p> |
| 6.2 | H6.2 | <p>Infectious substances</p> <p>Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.</p> |
| 8 | H8 | <p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.</p> |
| 9 | H10 | <p>Liberation of toxic gases in contact with air or water</p> <p>Substances or waste which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.</p> |

| | | |
|---|-----|--|
| 9 | H11 | Toxic (delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity. |
| 9 | H12 | Ecotoxic 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. |
| 9 | H13 | Capable of yielding another material which possesses H1-H12 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 1A Savings and transitional provisions

Part 1 Provisions consequent on commencement of [Protection of the Environment Operations Amendment \(Illegal Waste Disposal\) Act 2013](#)

1 Definition of “new contributor”

In this Part—

new contributor means the occupier of a scheduled waste facility who—

(a) immediately before 1 August 2015—

- (i) was not required to pay contributions under section 88 of the Act because the EPA had determined that the facility was used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste, or
- (ii) was exempt under clause 20(2)(a) of this Regulation (as in force immediately before that day) from the requirement to pay a contribution under section 88 of the Act in respect of waste received at the facility, and

(b) is required to pay a contribution to the EPA under section 88 of the Act in respect of waste received on or after that day because of the amendment to—

- (i) section 88 of the Act by the [Protection of the Environment Operations Amendment \(Illegal Waste Disposal\) Act 2013](#), or

- (ii) clause 20 of this Regulation by the *Protection of the Environment Operations (Waste) Amendment (Contributions) Regulation 2014*.

2 Deductions

For the avoidance of doubt, an occupier of a scheduled waste facility who is a new contributor cannot make a deduction under Division 4 of Part 2 of this Regulation in respect of waste received at the facility before 1 August 2015.

3 Weighbridges

- (1) Clause 36 of this Regulation does not apply in relation to the occupier of a scheduled waste facility who is a new contributor.
- (2) This clause ceases to have effect on 31 January 2016.

4 Baseline estimates and surveys for new contributors

- (1) **Estimate of waste existing immediately before 1 August 2015** An occupier of a waste facility who is a new contributor must, by no later than 31 August 2015, provide the EPA with the following information—
 - (a) an estimate of the amount of waste at the facility immediately before 1 August 2015 (calculated using an approved method),
 - (b) the waste type of that waste (determined in accordance with the Waste Levy Guidelines).
- (2) The information must be provided to the EPA in the approved form and manner.
- (3) **Baseline topographical survey for comparison with first volumetric survey** An occupier of a waste facility who is a new contributor must—
 - (a) cause a topographical survey of the facility to be carried out by a qualified surveyor (using an approved method) during August 2015, and
 - (b) provide the results to the EPA, in the approved form and manner, by no later than 30 September 2015.
- (4) In this clause—

qualified surveyor has the same meaning as in Part 2 of this Regulation.

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

Part 2 Provisions consequent on commencement of *Protection of the Environment Operations Legislation Amendment (Waste)*

Regulation 2018

5 Construction waste facility

In calculating a 12-month period for the purposes of clause 90B, all or part of the period commencing 12 months before the commencement of that clause may be included.

Schedules 2, 3 (Repealed)