

# Protection of the Environment Operations (Control of Burning) Regulation 2000

## Part 1 – Preliminary

### 1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 September 2000.

### 3 Definitions

(1) In this Regulation: "**approval**" means an approval in force under clause 9. "**domestic waste**" means waste (other than vegetation) that is of a kind and quantity ordinarily generated on domestic premises. "**domestic waste management services**" has the same meaning as in the *Local Government Act 1993*. "**the Act**" means the *Protection of the Environment Operations Act 1997*.

(2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

### 4 Application of Regulation

This Regulation does not apply to or in respect of the following:

- (a) the carrying out of bush fire hazard reduction work under the *Rural Fires Act 1997* that, in the opinion of the authority authorised to carry out the work, or local authority requiring the work to be carried out, is reasonably necessary for the protection of life, property or the environment,
- (b) the destruction, by means of burning, of any prohibited plant or prohibited drug under the *Drug Misuse and Trafficking Act 1985*,
- (c) the destruction, by means of burning, of an animal that has died, or is reasonably suspected to have died, as the result of a disease proclaimed under the *Stock Diseases Act 1923* or an exotic disease within the meaning of the *Exotic Diseases of Animals Act 1991*.

## Part 2 – Control of burning generally

### 5 General obligation to prevent or minimise air pollution

(1) A person who burns anything in the open or in an incinerator must do so by such practicable means as are necessary to prevent or minimise air pollution.

(2) Without limiting subclause (1), the means of preventing or minimising air pollution may include the following:

- (a) taking into account the potential for smoke impacting on any person due to wind direction and weather conditions,
- (b) taking reasonable measures to ensure that the material being burnt is not wet,
- (c) burning only material that is suitable for disposal by burning, having regard to possible effects on human health and the environment.

### 6 Prohibition on burning certain articles

(1) A person must not burn a prohibited article:

- (a) in the open, or
- (b) in an incinerator that is not licensed under the Act.

(2) For the purposes of this clause, the following articles are "**prohibited articles**":

- (a) tyres,
- (b) coated wire,
- (c) paint containers and residues,
- (d) solvent containers and residues,
- (e) timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP).

(3) It is not an offence under this clause to burn a tyre for the purposes of the giving of instruction in methods of fire fighting by an officer or member of a fire fighting authority, or by a fire control officer within the meaning of the *Rural Fires Act 1997*, when acting in his or her official capacity.

### **Part 3 – Control of burning in local government areas**

#### **7 Offences**

(1) A person must not burn anything:

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 1 of Schedule 1 except in accordance with an approval.

(2) A person must not burn any vegetation:

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 2 of Schedule 1 except in accordance with an approval.

(3) A person must not burn anything (other than vegetation):

- (a) in the open, or
- (b) in an incinerator,

in a local government area specified in Part 3 of Schedule 1 except in accordance with an approval.

#### **8 Exceptions**

(1) It is not an offence under clause 7:

- (a) to cook or barbecue in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities, so long as only dry seasoned wood, liquid petroleum gas (LPG), natural gas or proprietary barbeque fuel (including a small quantity of fire starter) is used, or
- (b) to burn vegetation, in the course of carrying on agricultural operations, on premises on which the vegetation grew, including:

- (i) the burning of vegetation for the purposes of clearing (other than for construction), or
- (ii) the burning of stubble, orchard prunings, diseased crops, weeds or pest animal habitats on farms, or
- (iii) the burning of pasture for regenerative purposes, or

(c) to burn anything for the purposes of the giving of instruction in methods of fire fighting by:

- (i) an officer or member of a fire fighting authority, or
- (ii) a fire control officer within the meaning of the *Rural Fires Act 1997*, or
- (iii) an industrial fire control officer,

when acting in his or her official capacity.

(2) It is not an offence under clause 7 to burn domestic waste, before 1 September 2001, in an incinerator:

- (a) that is installed in a residential building comprising home units, flats or apartments, and

- (b) that was, immediately before 1 September 2000, in regular use.
- (3) It is not an offence under clause 7:
  - (a) to burn anything in an incinerator that is licensed under the Act, or
  - (b) to burn anything in an incinerator that:
    - (i) is equipped with a primary and secondary furnace, and
    - (ii) is designed, maintained and operated in such a manner that ensures the maintenance of appropriate temperatures for the complete combustion of anything that the incinerator is designed to burn and prevents the escape of sparks or other burning material, and
    - (iii) is equipped with suitable equipment that is designed, maintained and operated for the purposes of controlling air impurities in the exhaust gas once the incineration process has been completed, and
    - (iv) is not installed in a residential building comprising home units, flats or apartments.
- (4) It is not an offence under clause 7 (3) to burn domestic waste on residential premises on which the waste was generated if domestic waste management services are not available to those premises.

## **9 Approval for certain fires or incinerators**

- (1) The EPA may grant an approval for the purposes of this Regulation:
  - (a) to any class of persons--by means of a notice published in the Gazette, or
  - (b) to any particular person--by means of a written notice given to the person (except in relation to an approval that would be granted to the person in accordance with subclause (2)).
- (2) The council of a local government area specified in Part 2 of Schedule 1 may grant an approval for the purposes of this Regulation in respect of the burning of dead and dry vegetation on the premises on which the vegetation grew in the local government area:
  - (a) to any class of persons--by means of a notice published in a local newspaper circulating in the local government area, or
  - (b) to any particular person--by means of a written notice given to the person.
- (3) Before granting an approval for the purposes of this Regulation, the EPA or local council concerned must take the following matters into consideration:
  - (a) the impact on regional air quality and amenity,
  - (b) the impact on local air quality and amenity,
  - (c) the feasibility of re-use, recycling or other alternative means of disposal,
  - (d) any opinions of the sector of the public likely to be affected by the proposed approval,
  - (e) in the case of an approval under subclause (2) (a)--any opinions of the EPA in relation to the proposed approval.
- (4) An approval:
  - (a) is subject to such conditions (if any) as are specified in the notice by which the approval is granted, and
  - (b) may be amended or revoked by means of a notice given or published in the same way as the original notice granting the approval was given or published, and
  - (c) remains in force for a period of 12 months (or such other period as is specified in, or implied by, the approval) from the date it is granted unless sooner revoked by the authority that granted it.

## **Part 4 – Miscellaneous**

### **10 Amendment of Protection of the Environment Operations (General) Regulation 1998**

The *Protection of the Environment Operations (General) Regulation 1998* is amended as set out in Schedule 2.

## **11 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999**

The *Protection of the Environment Operations (Penalty Notices) Regulation 1999* is amended as set out in Schedule 3.

## **12 Existing approvals**

- (1) Subject to subclause (2), an existing approval:
  - (a) is taken to be an approval granted by the EPA under this Regulation, and
  - (b) may be amended or revoked accordingly.
- (2) An existing approval does not have any effect to the extent that it is inconsistent with a provision of this Regulation.
- (3) In this clause: "**existing approval**" means an approval:
  - (a) that was granted under clause 8 of the *Clean Air (Control of Burning) Regulation 1995*, and
  - (b) that was in force immediately before 1 September 2000.

## **Schedule 1 Local government areas in which burning is prohibited**

(Clauses 7 and 9 (2))

### **Part 1 – Areas in which all burning (including burning of vegetation and domestic waste) is prohibited except with approval**

Ashfield

Auburn

Bankstown

Bathurst

Baulkham Hills

Blacktown

Botany

Broken Hill

Burwood

Camden

Campbelltown

Canterbury

Concord

Drummoyne

Fairfield

Gosford

Holroyd

Hunter's Hill

Hurstville

Kogarah

Ku-ring-gai

Lake Macquarie

Lane Cove

Leichhardt

Liverpool

Manly

Marrickville

Mosman

Newcastle

North Sydney

Orange

Parramatta

Pittwater

Queanbeyan

Randwick

Rockdale

Ryde

Shellharbour

South Sydney

Strathfield

Sutherland

Sydney

Warringah

Waverley

Willoughby

Woollahra

Wollongong

Wyang

## **Part 2 – Areas in which burning of vegetation is prohibited except with approval**

Albury

Armidale Dumaresq

Ballina

Bingara

Blue Mountains

Brewarrina

Cessnock

Cobar

Cooma-Monaro

Coonabarabran

Dubbo

Eurobodalla

Goulburn

Greater Lithgow

Greater Taree

Gunnedah

Hastings

Hawkesbury

Hornsby

Kiama

Leeton

Lismore

Maclean

Maitland

Mudgee

Muswellbrook

Nambucca

Penrith

Port Stephens

Quirindi

Tamworth

Tenterfield

Tumut

Uralla

Wagga Wagga

Warren

Wellington

Wingecarribee

Wollondilly

Young

**Part 3 – Areas in which all burning (other than burning of vegetation) is prohibited except with approval or except for on site burning of domestic waste**

**on residential premises where domestic waste management services are not available**

Armidale Dumaresq

Ballina

Blue Mountains

Brewarrina

Cessnock

Cobar

Cooma-Monaro

Coonabarabran

Cootamundra

Dubbo

Eurobodalla

Goulburn

Greater Lithgow

Greater Taree

Gunnedah

Hastings

Hawkesbury

Hornsby

Inverell

Junee

Leeton

Lismore

Maclean

Maitland



Mudgee

Muswellbrook

Penrith

Port Stephens

Severn

Tallaganda

Tamworth

Temora

Tenterfield

Tumut

Urana

Wagga Wagga

Warren

Wellington

Wingecarribee

Wollondilly

Young

## **Schedule 2 Amendment of Protection of the Environment Operations (General) Regulation 1998**

(Clause 10)

**Clause 63 Additional matters to be included in public register: sec 308**

Insert after clause 63 (b):

(c) any approval granted under clause 9 of the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.

## **Schedule 3 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999**

(Clause 11)

**Schedule 1 Penalty notice offences**

Omit the matter relating to the *Clean Air (Control of Burning) Regulation 1995*.

Insert instead:

**Protection of the Environment Operations (Control of Burning) Regulation 2000**

Column 1	Column 2	Column 3	Column 4	Column 5
Provision of Regulation	Short description	Officer	Penalty (individuals)	Penalty (corporations)
Clause 5 (1)	Burn otherwise than to prevent or minimise air pollution	1, 2, 3	\$500	\$1,000
Clause 6 (1)	Burn prohibited article	1, 2, 3	\$500	\$1,000
Clause 7 (1)	Prohibited burning (Part 1 area)	1, 2, 3	\$500	\$1,000
Clause 7 (2)	Prohibited burning (Part 2 area)	1, 2, 3	\$500	\$1,000
Clause 7 (3)	Prohibited burning (Part 3 area)	1, 2, 3	\$500	\$1,000

**Historical notes**

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
Cll	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Protection of the Environment Operations (Control of Burning) Regulation 2000* published in Gazette No 109 of 25.8.2000, p 8319 and amended as follows:*Protection of the Environment Operations (Control of Burning) Amendment Regulation 2002* (GG No 149 of 20.9.2002, p 8203)*Protection of the Environment Operations (Control of Burning) Amendment Regulation 2004* (GG No 200 of 17.12.2004, p 9360)

Table of amendments

Sch 1	Am 20.9.2002; 17.12.2004.
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