

Environmentally Hazardous Chemicals Regulation 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmentally Hazardous Chemicals Act 1985*.

Minister for Climate Change and the Environment

Explanatory note

The object of this Regulation is to remake, with some amendments, the *Environmentally Hazardous Chemicals Regulation 1999* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation increases a number of fees payable under the *Environmentally Hazardous Chemicals Act 1985* ("**the Act**").

This Regulation also makes provision with respect to the following:

- (a) the matters to be included in certain applications and notices made or issued under the Act,
- (b) the time within which appeals under the Act may be made,
- (c) the form of a receipt for property seized by authorised officers and the manner of advertising the proposed forfeiture of seized property,
- (d) the information to be included in registers under the Act,
- (e) the appointment of alternate members of the Hazardous Chemicals Advisory Committee,
- (f) the payment of fees,
- (g) savings and formal matters.

This Regulation is made under the *Environmentally Hazardous Chemicals Act 1985*, including sections 13 (2) and (3), 19 (2), 28 (1) (b) and (3) (a), 29A (2) (b) and (4) (a), 37 (1), 38 (1), 39 (1), 45 (3), 48 (3) (b), 52 (2) and 58 (the general regulation-making power) and clause 4 of Schedule 1.

1 Name of Regulation

This Regulation is the *Environmentally Hazardous Chemicals Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

This Regulation replaces the *Environmentally Hazardous Chemicals Regulation 1999* which is repealed on 1 September 2008 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

- (1) In this Regulation: "**the Act**" means the *Environmentally Hazardous Chemicals Act 1985*.
- (2) Notes in this Regulation do not form part of this Regulation.

4 Application for assessment of prohibited activities

For the purposes of section 13 (3) of the Act, the prescribed kinds of data relating to a prescribed activity to be restricted are as follows:

- (a) a name, description or formula of a chemical in relation to which the prescribed activity is proposed to be carried on, or any other information which would reveal its chemical identity,
- (b) any physical or chemical data which would reveal the chemical identity of a chemical referred to in paragraph (a),
- (c) data from toxicological and ecotoxicological tests, but not the results of any such tests,
- (d) genuine manufacturing or other industrial or commercial secrets,
- (e) data which are the same as, or virtually the same as, or which include, data whose disclosure has been restricted in accordance with the Act or any Act of the Commonwealth or of a State or a Territory relating to chemicals or chemical wastes.

5 Assessment of chemicals

- (1) For the purposes of section 19 (2) of the Act, the prescribed particulars to be contained in a notice of intention to assess a chemical are as follows:
 - (a) the chemical name or identity of the chemical,
 - (b) the name and address of the person with whom submissions may be lodged and the date by which any such submissions must be lodged,
 - (c) the address at which data, if any, on the chemical may be inspected.
- (2) For the purposes of section 19 (2) of the Act, the prescribed time in relation to submissions is 30 days.

6 Notice of licence application

- (1) For the purposes of section 28 (3) (a) of the Act, the prescribed particulars to be included in a notice of an application for a licence are the particulars set out in subclause (3).
- (2) For the purposes of section 29A (4) (a) of the Act, the prescribed particulars to be included in a notice of an application for the transfer of a licence are the particulars set out in subclause (3) and the following:
 - (a) the name and address of the current holder of the licence,
 - (b) the address of the premises, if any, in respect of which the licence is held.
- (3) A notice of an application for a licence or a transfer of a licence is to include the following particulars:
 - (a) the applicant's name and address,
 - (b) the address of the premises, if any, in respect of which the application is made,
 - (c) the name or description of the chemical or declared chemical waste to which the application relates,
 - (d) details or a description of any chemical control order in force in respect of the chemical or declared chemical waste,
 - (e) a list and details of the prescribed activities for which the licence is sought.
- (4) Nothing in this clause requires:
 - (a) the inclusion in the notice of any matter that is required by the Act not to be disclosed, or
 - (b) the disclosure of any matter except in the manner in which it is required by the Act to be disclosed.

7 Time before appeal may be made

For the purposes of section 37 (1) of the Act, the prescribed time within which the Authority must notify the terms of a chemical control order made by it or its determination not to make any such order is 60 days.

8 Time within which appeal may be made

- (1) For the purposes of section 38 (1) of the Act, the prescribed time within which a person may appeal against a chemical control order or a determination made under

section 20 (d) of the Act is 30 days.

(2) For the purposes of section 39 (1) of the Act, the prescribed time within which a person may appeal against a decision of the Authority about a licence is 30 days.

9 Form of receipt

For the purposes of section 45 (3) of the Act, the prescribed form of receipt to be given by an authorised officer is the form in Schedule 1.

10 Seized property

For the purposes of section 48 (3) (b) of the Act, the prescribed manner for advertising a notice of an application for forfeiture of seized property is by advertising in a newspaper circulating throughout New South Wales.

11 Registers of declared chemical wastes, chemical control orders and licences

For the purposes of section 52 (2) of the Act, the prescribed particulars to be included in a register are as follows:

- (a) in the case of the register of declared chemical wastes--a copy of every order in force under section 10 of the Act,
- (b) in the case of the register of chemical control orders--a copy of every chemical control order in force,
- (c) in the case of the register of licences--a certified copy of each licence currently in force.

12 Alternate members of Hazardous Chemicals Advisory Committee

- (1) For the purposes of clause 4 of Schedule 1 to the Act, a person or body entitled to nominate one or more nominees for membership of the Committee is entitled to nominate an alternate member for each nominee of the person or body.
- (2) The Local Government Association of New South Wales or the Shires Association of New South Wales, or both, may nominate alternatives for the persons nominated by them.
- (3) The Minister may select:
 - (a) from the persons nominated under subclause (2), a person as an alternate member for the member selected from persons nominated by the Local Government Association of New South Wales or the Shires Association of New South Wales, or both, and
 - (b) a person as an alternate member for the member of the Committee selected by the Minister to represent major users of chemicals in New South Wales.
- (4) During the illness or absence of a member of the Committee, the alternate member has and may exercise the functions of the member.

13 Technology assessment

- (1) A person may request the Authority to carry out an assessment of any technology that the person proposes to use in relation to processing a chemical, or a declared chemical waste, that is the subject of a chemical control order.
- (2) The Authority may, in respect of any such assessment, charge a fee that does not exceed:
 - (a) \$3,350--if the assessment is commenced on or after 1 September 2008 and on or before 31 December 2008, or
 - (b) \$4,600--if the assessment is commenced on or after 1 January 2009 and on or before 31 December 2009, or
 - (c) \$5,850--if the assessment is commenced on or after 1 January 2010 and on or before 31 December 2010, or
 - (d) \$7,100--if the assessment is commenced on or after 1 January 2011 and on or before 31 December 2011, or

(e) \$8,400--if the assessment is commenced on or after 1 January 2012.

14 Fees

(1) The fees set out in Column 2 of Schedule 2 are the prescribed fees for the matters set out opposite those fees in Column 1 of that Schedule.

(2) The Authority may at any time waive payment of part or all of a fee payable under this Regulation, whether in a particular case or in a class of cases.

15 Savings

Any act, matter or thing which had effect immediately before the repeal of the *Environmentally Hazardous Chemicals Regulation 1999* is taken to have effect under this Regulation.

Schedule 1 Form

(Clause 9)

Environment Protection Authority

Environmentally Hazardous Chemicals Act 1985 (section 45 (3))

Receipt for taking sample of substance or removing substance or container

This receipt is to:

[name of occupier of premises]

[address of premises]

I [name of authorised officer] an authorised officer under the *Environmentally Hazardous Chemicals Act 1985*, acknowledge by this receipt that:

(delete whichever of the following does not apply)

I have today taken from the above premises a sample of the following substance in the following quantity: [name or description of substance] [approximate quantity of substance]

I have today removed from the above premises the following substance or the following containers: [name or description of substance] [size and number of containers]

[signature of authorised officer]

[address of authorised officer]

Schedule 2 Fees

(Clause 14)

Column 1	Column 2
Matter for which fee is payable	Fee \$
Application under section 13 (1) of Act	1,680
Application for a new licence made under section 28 (1) of Act on or after 1 September 2008 and on or before 31 December 2008	1,030
Application for a new licence made under section 28 (1) of Act on or after 1 January	1,060

2009 and on or before 31 December 2009	
Application for a new licence made under section 28 (1) of Act on or after 1 January 2010 and on or before 31 December 2010	1,090
Application for a new licence made under section 28 (1) of Act on or after 1 January 2011 and on or before 31 December 2011	1,120
Application for a new licence made under section 28 (1) of Act on or after 1 January 2012	1,140
Application to renew a licence made under section 28 (1) of Act on or after 1 September 2008 and on or before 31 December 2008	650
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2009 and on or before 31 December 2009	660
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2010 and on or before 31 December 2010	680
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2011 and on or before 31 December 2011	690
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2012	710
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 September 2008 and on or before 31 December 2008	520
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2009 and on or before 31 December 2009	530
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2010 and on or before 31 December 2010	540
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2011 and on or before 31 December 2011	560
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2012	570
Application to transfer a licence made under section 29A of Act on or after 1 September 2008 and on or before 31 December 2009	120
Application to transfer a licence made under section 29A of Act on or after 1 January 2010 and on or before 31 December 2011	125
Application to transfer a licence made under section 29A of Act on or after 1 January 2012	130

Historical notes

The following abbreviations are used in the Historical notes:

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

Table of amending instruments *Environmentally Hazardous Chemicals Regulation 2008* (358). GG No 100 of 22.8.2008, p 7761. Date of commencement, 1.9.2008, cl 2.