



Tonga

ENVIRONMENT MANAGEMENT (LITTER AND WASTE CONTROL) REGULATIONS

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ENVIRONMENT MANAGEMENT (LITTER AND WASTE CONTROL) REGULATIONS

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ENVIRONMENT MANAGEMENT (LITTER AND WASTE CONTROL) REGULATIONS

Made under section 19(1)(c) of the Environment Management Act

Commencement [30th May, 2016]¹

PART I - PRELIMINARY

1 Short Title

This Regulation may be cited as the Environment Management (Litter and Waste Control) Regulations.

2 Interpretation

In these Regulations, unless the context otherwise requires —

“**Act**” means the Environment Management Act 2010, as amended;

“**approved Authority**” means any approved Authority for any waste management service area under the Waste Management Act 2005 , and includes the Waste Authority Limited;

“**authorised dumping site**” means any waste dump, landfill or other waste disposal facility operated by an approved Authority in accordance with the Waste Management Act 2005;

“**Court**” means the Magistrates Court;

“**corporation**” includes any licensed business;

“**deposit**”, in relation to litter or waste, includes —

(a) placing, throwing or dropping; or

- (b) allowing litter or waste to be thrown or dropped, or to otherwise escape, from any motor vehicle, trailer, ship, boat, vessel or craft;

“environment officer” means an environment officer appointed under section 11 of the Act;

“hazardous waste” means —

- (a) any waste which are, or which have the potential to be, toxic or poisonous, or which may cause injury or damage to human health or to the environment;
- (b) any specific substance, object or thing determined under any law to be a hazardous waste;
- (c) any other matter or thing deemed under international conventions applicable to the Kingdom of Tonga to be hazardous waste, or to have the characteristics of hazardous waste; and
- (d) any waste provided under the Hazardous Waste and Chemicals Act 2010 as hazardous waste;

“litter” includes refuse, rubbish, paper, cardboard, bottles, cans, glass, metal, food scraps, cigarette butts or any part of a discarded cigarette, or any other waste matter of a like nature, which are —

- (a) discarded as waste; or
- (b) kept in any place for no purpose other than as waste;

“ozone depleting substance” means all substances prohibited or regulated as controlled substances under the Vienna Convention for the Protection of the Ozone Layer from time to time, including the chemicals prescribed under the Convention being types of chlorofluorocarbons, halons, carbon tetrachlorides, methyl chloroforms, hydrobromofluorocarbons, hydrochlorofluorocarbons and methyl bromide;

“persistent organic pollutant” means any of the chemicals or substances regulated under the Stockholm Convention from time to time, including any substance or thing which is or contains aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene;

“pollution” means the introduction by persons, directly or indirectly, of substances or things into the environment which —

- (a) contaminates the soil, water, sea, air or the atmosphere;
- (b) may result in harm to living resources and ecosystems, or hazardous to human health; or
- (c) causes detriment to or degradation of the environment; or detriment to any beneficial use of any part of the environment, and includes “pollution” as prescribed by any law;

“place” includes —

- (a) any public land, or for the purposes of depositing, dumping or discharging of litter, waste or hazardous waste includes land belonging to another person;
- (b) every road, street, private roadway, footpath, access way, drain, service lane, thoroughfare, wharf, pier, jetty and airport to which the public has access;
- (c) any park and reserve, and any place of public recreation to which the public has access, whether with or without payment of any fee;
- (d) any beach or foreshore, mangrove area, swamp or any other similar place to which the public has access;
- (e) in or near a water source, a lake or the sea; and
- (f) any other place whether public or private in the open air to which the public has access, whether with or without payment of any fee, but does not include any authorised dumping site, or any rubbish bin or receptacle in any place;

“**Stockholm Convention**” means the Stockholm Convention on Persistent Organic Pollutants 2001; and

“**waste**” has the same meaning as in the Waste Management Act 2005, and includes dead animals being disposed of as waste, and all things declared or deemed to be waste under any other law.

PART II - LITTER CONTROL MEASURES

3 Offence to litter

Any person, who without reasonable justification, drops, deposits or dumps litter at any place, commits an offence and shall be liable upon conviction to a fine not exceeding \$50.

4 Duty to keep land and premises clean

Every owner and occupier of land or premises shall keep their land and premises free from litter and other waste which may become litter.

PART III - WASTE RELATED OFFENCES

5 Offence to dump waste

Any person, who deposits, dumps or discharges any waste, or who causes waste to be deposited, dumped or discharged on any place, commits an offence and shall be liable upon conviction to a fine -

- (a) not exceeding \$500, in the case of an individual; or
- (b) not exceeding \$1,000, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

6 Offence to dump hazardous waste

Any person who, deposits, dumps or discharges any hazardous waste, or who causes hazardous waste to be deposited, dumped or discharged on any place, commits an offence and shall be liable upon conviction -

- (a) to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both, in the case of an individual; or
- (b) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

7 Dumping waste which cause pollution

(1) Any person who, deposits or dumps waste at a place other than an authorised dumping site, and such waste causes pollution to a public area or to land belonging to the government or to another person, commits an offence and shall be liable upon conviction to a fine —

- (a) not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both, in the case of an individual; or
 - (b) not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.
- (2) The dumping or disposal of dead animals in a place is deemed to be an act which causes pollution for the purposes of sub-regulation (1).

8 Offences relating to public waste bins

(1) Any person who dumps waste into a public waste receptacle that is provided at a place only for the purpose of receiving small quantities of litter, commits an offence and shall be liable upon conviction to a fine —

- (a) not exceeding \$100, in the case of an individual; or
 - (b) not exceeding \$500, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.
- (2) Any person who steals, damages or sets fire to a public waste receptacle that is provided at a place for the purpose of receiving litter and waste, commits an offence and shall be liable upon conviction to a fine not exceeding \$500.
 - (3) The owner and driver of a taxi or public bus who fails to provide a receptacle for passengers to deposit litter while on board the taxi or bus, commits an offence and shall be liable upon conviction to a fine not exceeding \$100.

9 Restrictions on burning litter and waste

- (1) Any person who burns litter or other waste in a manner or at a place which causes any nuisance to any person commits an offence and shall be liable upon conviction to a fine not exceeding \$200.
- (2) Any person who burns litter or other waste and causes or permits the spread of fire in any manner so as to burn any area of land, any structure or any living vegetation commits an offence and shall be liable upon conviction to a fine not exceeding \$500 and is liable to pay compensation for any damage so caused.

10 Offence to burn noxious waste

- (1) For the purposes of this regulation “**noxious waste**” includes waste —
 - (a) which contains plastics, rubber, polystyrene foam, waste oil which emits smoke or fumes; or
 - (b) which creates an unintentional Persistent Organic Pollutant as provided for in the Stockholm Convention.
- (2) Any person who intentionally burns noxious waste commits an offence and shall be liable upon conviction to a fine —
 - (a) not exceeding \$1,000 in the case of an individual; or
 - (b) not exceeding \$5,000 in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

11 Offence to burn hazardous waste

A person who intentionally burns hazardous waste commits an offence and shall be liable upon conviction to a fine —

- (a) not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both, in the case of an individual; or
- (b) not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

12 Certain waste not to be used for land filling or reclamation

- (1) No waste comprising —
 - (a) electrical or computer goods or electrical fittings of any nature;
 - (b) any appliances in the form of refrigerators of any type, ovens and stoves or washing machines and dryers; or
 - (c) any other goods, substance or thing restricted under the provisions of the Waste Management Act 2005,may be used for the purposes of filling land, or for land reclamation, other than at an authorised dumping site.
- (2) Any person who breaches sub-regulation (1) commits an offence and shall be liable upon conviction to a fine —
 - (a) not exceeding \$1,000, in the case of an individual; or
 - (b) not exceeding \$5,000, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

13 Offence to burn waste at authorised dumpsites

Any person who lights a fire, or causes a fire to be lit, at an authorised dumping site other than —

- (a) in an incinerator used at the site by an approved Authority; or
- (b) in accordance with lawful directions given by an officer of an approved Authority,

commits an offence, and shall be liable upon conviction to a fine —

- (i) not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both, in the case of an individual; or
- (ii) not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

14 Prescribed hazardous waste

- (1) For the purposes of this regulation “**prescribed hazardous waste**” includes —
 - (a) all ozone depleting substances;
 - (b) all persistent organic pollutants;
 - (c) asbestos, or any product containing asbestos; and
 - (d) any other type of waste determined in accordance with any law to be a hazardous waste.
- (2) Any person who —
 - (a) disposes of or dumps any prescribed hazardous waste at an authorised dumping site without disclosing its nature to an officer of the approved Authority managing the dumpsite;
 - (b) provides any false information to an approved Authority in relation to prescribed hazardous waste being disposed of or dumped at an authorised dumping site; or
 - (c) fails to store, transport or safely dispose of any prescribed hazardous waste in a manner required by law or which is consistent with any international waste related convention applying in the Kingdom,commits an offence and shall be liable upon conviction to a fine —
 - (i) not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both, in the case of an individual; or
 - (ii) not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

PART IV - ENFORCEMENT PROVISIONS

15 Officers to enforce these Regulations

- (1) These regulations may be enforced by —
 - (a) environment officers;
 - (b) officers of an approved Authority appointed in writing for that purpose by the Chief Executive Officer of the relevant approved Authority;
 - (c) police officers; and
 - (d) health inspectors and authorised officers under laws related to public health.

- (2) The officers referred to in sub-regulation (1) may serve any notice under these Regulations or under the Act, in relation to the enforcement of these Regulations.

16 Notice to cease certain activities concerning waste

- (1) An environment officer or any officer authorised under regulation 15 may issue a notice in the form prescribed in Schedule 1 requiring a person who appears to have breached these Regulations to refrain from doing any act specified in the notice, or to take any action in relation to litter or waste which is stipulated in the notice.
- (2) A notice issued under sub-regulation (1) may specify that certain waste are not to be used for land filling or reclamation and may require that specific waste be removed from any land which has been, or is being, filled or reclaimed.
- (3) Any person who fails to comply with a notice, or any requirement stated on a notice, issued under this regulation commits an offence and shall be liable upon conviction to a fine —
 - (a) not exceeding \$1,000, in the case of an individual; or
 - (b) not exceeding \$5,000, in the case of a corporation, or an individual who has committed an offence against this regulation on a previous occasion.

17 Remedial action and cost recovery

If a person breaches regulation 4 or fails to comply with a notice issued under regulation 16, an environment officer or an approved Authority may arrange for the waste to be removed and disposed of, and the costs incurred may be recovered from the person who is in breach of these Regulations, either as a civil debt or pursuant to an order made by a court at the time of convicting the person of an offence under these Regulations.

PART V – INFRINGEMENT NOTICES

18 Infringement Notice

When an environment officer or any officer authorised under regulation 15 detects the commission of an offence under these Regulations, such officer has the authority to issue to the person committing such offence a Notice of Infringement in the form specified in Schedule 2.

19 Amount of Infringement Notice

The penalty specified in the infringement notice under regulation 18, shall not exceed the maximum fine that a court could impose for the offences, as set out in Schedule 3.

PART VI - MISCELLANEOUS

20 Employers to be liable

If a person commits an offence under Part III of these regulations while acting in the course of that person's employment, the employer of that person shall be liable to be prosecuted for the offence as if the employer had committed the offence.

21 Proving matters relating to waste

- (1) If in any prosecution under these regulations —
 - (a) evidence is given by a medical practitioner, or any health inspector, that a chemical, substance or item is hazardous or is dangerous to human or animal health, or that any matter constitutes a health risk; or
 - (b) evidence is given by an environment officer that there has been, or may be, a harmful or adverse effect on the environment,the Court shall accept that evidence as prima facie evidence of the matters alleged.
- (2) If a prosecution relates to a chemical or other similar substance, the court may have regard to any information disclosed on the packaging of the chemical or substance to determine whether there is a danger to health or to the public.
- (3) Nothing in this regulation shall limit or affect the manner in which any matter may be proved to the satisfaction of a court.

SCHEDULE 1

LITTER AND WASTE COMPLIANCE NOTICE

Date: / /20

An officer of the Ministry of Environment/ an approved Authority/ Tonga Police/ Ministry of Health, issues this notice to:

Name:

Address:

OR TO THE OCCUPIER OF (*Address of premises*)

TAKE NOTICE that you are required to –

**delete as appropriate*

*1. Remove litter or waste from your land/premises and dispose of the litter or waste as required by the Waste Management Act 2005.

*2. Remove waste under your control to the authorised dump at [*name place where waste is to be taken*]

Or by **here state any other requirement for the proper disposal of the waste*

.....

*3. Cease burning litter or waste and dispose of the litter or waste as required by the Waste Management Act 2005.

*4. Cease using the following waste for land filling or reclamation

.....

*5. Take the following action in relation to litter or waste under your control:

[*Insert details of waste disposal requirements*]

.....

TAKE NOTICE that if you fail to comply with the requirements of this Notice within 5 days of receiving this Notice you may be fined up to \$1,000 for individuals and \$5,000 for companies and businesses.

AND TAKE FURTHER NOTICE that if you continue to offend and cause injury to human health or damage to the environment you may be prosecuted under section 25(3) of the Waste Management Act 2005 and fined up to \$10,000 or face a term of imprisonment for up to 2 years, or both.

Issued by the Ministry of Environment /An approved Waste Authority/Tonga
Police/Ministry of Health

SIGNED

**Environment Officer*

**Officer of an approved Waste Authority*

**Police Officer*

**Health Inspector or Authorised Officer under any public health law*

SCHEDULE 2**FORM OF NOTICE OF INFRINGEMENT**

Notice of Infringement

(Regulation 18)

Date:

To *[Name]*of *[Address]*

You have been found to have committed the following offence(s) under the Environment Management (Litter and Waste Control) Regulations (marked with a “x”) –

Column A	Column B	*Indicate offence with “x”
Regulation 3 – Littering	\$20	
Regulation 5 – Dumping waste	\$100	
Regulation 6 – Dumping hazardous waste	\$2,000	
Regulation 7(1) – Dumping waste which cause pollution	\$250	
Regulation 8(1) – Unlawful use of public waste bins	\$50	
Regulation 8(2) – Stealing, damaging or burning a public waste bin	\$250	
Regulation 8(3) – Not providing rubbish bins in taxis and buses	\$20	
Regulation 9(1) – Burning litter and waste	\$50	
Regulation 10 – Burning noxious waste	\$500	
Regulation 11 – Burning hazardous waste	\$2,000	
Regulation 12(2) – Use of banned waste for land filling and land reclamation	\$500	
Regulation 13(1) – Unlawful fires at dumpsites	\$1,000	

Regulation 14(2)(a) – Failure to disclose prescribed hazardous waste when taking to dumpsites	\$1,000	
Regulation 14(2)(b) – Providing false information about prescribed hazardous waste when taking to dumpsites	\$1,000	
Regulation 14(2)(c) – Failure to safely store, transport and dispose of prescribed hazardous waste	\$1,000	
Regulation 16(3) - Failure to comply with clean up notice	\$200	

The indicated fine in the above table applies to this offence.

You may sign the declaration below and take this notice together with the sum of \$ to pay the fine only to the Clerk of the Magistrates' Court at district within 21 days of today's date;

OR

If you wish to contest this fine a summons will be issued to you after 21 days and you will be required to attend a court and appear before a Magistrate.

DECLARATION:

I, [*Insert your name*] understand that under clause 10 of the Constitution of Tonga I have a right to have this matter dealt with by a court. However instead of appearing in court I wish to pay the fine as set out in this notice. I tender this Declaration and the fine of \$ set by this Notice of Infringement.

Signed: _____ **Dated:** _____

Environment Officer/Officer authorised under regulation 15 of the Environment Management (Litter and Waste Control) Regulations.

ENDNOTES

¹ G 24/2016