

South Australia

ENVIRONMENT PROTECTION (GENERAL) REGULATIONS 1994

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LEGISLATIVE HISTORY

REGULATIONS UNDER THE ENVIRONMENT PROTECTION ACT 1993

Environment Protection (General) Regulations 1994

being

No. 183 of 1994: *Gaz.* 27 October 1994, p. 1346¹

as varied by

No. 214 of 1994: *Gaz.* 15 December 1994, p. 2265¹

No. 49 of 1996: *Gaz.* 4 April 1996, p. 1921²

No. 50 of 1996: *Gaz.* 4 April 1996, p. 1922²

No. 54 of 1997: *Gaz.* 1 May 1997, p. 1707³

No. 156 of 1998: *Gaz.* 2 July 1998, p. 37⁴

No. 4 of 1999: *Gaz.* 14 January 1999, p. 409⁵

No. 262 of 2000: *Gaz.* 16 November 2000, p. 3216⁶

¹ Came into operation 1 May 1995: reg. 2.

² Came into operation 4 April 1996: reg. 2.

³ Came into operation 1 May 1997: reg. 2.

⁴ Came into operation 2 November 1998: reg. 2.

⁵ Came into operation 14 January 1999: reg. 2.

⁶ **Came into operation 16 November 2000: reg. 2.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last consolidation.*
- *For the legislative history of the regulations see Appendix.*

Citation

1. These regulations may be cited as the *Environment Protection (General) Regulations 1994*.

Commencement

2. These regulations will come into operation on the day on which the Act comes into operation.

Interpretation

3. In these regulations—

"the Act" means the *Environment Protection Act 1993*.

Prescribed national scheme laws

3A. (1) For the purpose of paragraph (a) of the definition of "**the prescribed national scheme laws**" in section 3(1) of the Act, the *National Environment Protection Council Act 1994* of the Commonwealth, as in force from time to time, is the prescribed law of the Commonwealth.

(2) For the purpose of paragraph (b) of the definition of "**the prescribed national scheme laws**" in section 3(1) of the Act, the *National Environment Protection Council (South Australia) Act 1995* is the prescribed law of this State.

Environment Protection Fund (Section 24)

4. (1) For the purposes of section 24(3)(a) of the Act, the prescribed percentage of fees (other than expiation fees) to be paid into the Environment Protection Fund is five per cent.

(2) For the purposes of section 24(3)(b) of the Act, the prescribed percentage of penalties recovered in respect of offences (other than expiation fees or penalties to which a council is entitled) to be paid into the Environment Protection Fund is 100 per cent.

(3) For the purposes of section 24(3)(e) of the Act, the prescribed percentage of levy payments under Part 15 of the Act to be paid into the Environment Protection Fund is five per cent.

Prescribed bodies (Section 28)

4AA. For the purposes of section 28 of the Act, the following bodies are prescribed bodies:

- Australian Conservation Foundation Inc (Adelaide Branch)
- Australian Institute of Environmental Health
- Conservation Council of South Australia Incorporated
- Environmental Law Community Advisory Service (SA) Incorporated
- Environment Management Industry Association of Australia
- Litter and Recycling Research Association (SA Division)
- Local Government Association of South Australia
- National Environmental Law Association Limited (SA Division)
- Nature Conservation Society of South Australia Inc
- Royal Australian Chemical Institute Inc (SA Branch)
- South Australian Chamber of Mines and Energy Inc
- South Australian Employers' Chamber of Commerce and Industry Incorporated
- South Australian Farmers Federation Incorporated
- State Disaster Committee

United Trades and Labor Council of South Australia
Waste Management Association of Australia Incorporated.

Prescribed bodies (Section 29)

4AB. For the purposes of section 29 of the Act—

(a) the following bodies are prescribed bodies:

Australian Capital Territory Office of the Environment

Environment Australia (Commonwealth)

International Standardisation Organisation

National Health and Medical Research Council

New South Wales Environment Protection Authority

Northern Territory Department of Lands, Planning and Environment

Queensland Department of Environment

Standards Australia

Tasmanian Department of Environment and Land Management

United Nations Environment Program

Victorian Environment Protection Authority

Western Australian Department of Environmental Protection

Western Australian Environment Protection Authority

World Health Organisation; and

(b) the following bodies, formed under an agreement between the governments of the Commonwealth and the States and Territories of the Commonwealth and New Zealand and comprised of Ministerial representatives from time to time of those governments, are prescribed bodies:

Agricultural and Resources Management Council of Australia and New Zealand

Australia and New Zealand Environment and Conservation Council

Australia and New Zealand Minerals and Energy Council

Health and Community Services Ministerial Council

Ministerial Council on Forestry, Fisheries and Aquaculture

Planning, Housing and Local Government Ministerial Council.

Amendments to environment protection policies (Section 32)

4A. (1) For the purposes of section 32(1)(c) of the Act, the Minister may make changes of the following kinds by notice in the *Gazette* under that section:

- (a) clause 4(2)(c) of the *Environment Protection (Burning) Policy 1994* may be amended so that—
 - (i) an additional council area or portion of a council area is referred to in the provision if the council for the area has applied to the Minister for that change to be made;
 - (ii) a reference to a council, council area or portion of a council area is changed to reflect a change in an official name;
 - (iii) a reference to a council, council area or portion of a council area is removed if the council or council area has ceased to exist or the portion has ceased to exist or ceased to be within a specified council area;
- (b) Schedule 1 of the *Environment Protection (Burning) Policy 1994* may be amended so that—
 - (i) an additional council area or portion of a council area is referred to in the Schedule if the council for the area has applied to the Minister for that change to be made;
 - (ii) a reference to a council, council area or portion of a council area is changed to reflect a change in an official name;
 - (iii) a reference to a council, council area or portion of a council area is removed if the council or council area has ceased to exist or the portion has ceased to exist or ceased to be within a specified council area.

Exemptions under Part 6 of Act (Section 37)

5. For the purposes of section 37 of the Act, no exemption is to be granted or renewed so that it remains in force for more than two years except—

- (a) an exemption from the application of a provision of Division 3 of Part 8 of the Act; or
- (b) an exemption where—
 - (i) the exemption is subject to conditions requiring compliance with the requirements of an environment improvement program; and
 - (ii) compliance with the requirements of the environment improvement program will result in compliance with the provision in respect of which the exemption is granted; or

5.

- (c) an exemption where the Authority is satisfied that the purpose of the exemption relates only to pollution arising from commencement of a process or activity following shutdown of the process or activity.

Time limit for determination of applications for environmental authorisations (Section 42)

6. For the purposes of section 42 of the Act, the prescribed period is—

- (a) in the case of an application for an environmental authorisation required to be granted (with effect from the commencement of the Act) under clause 5 of Schedule 2 of the Act—four months; or
- (b) in the case of an application that is required to be referred to the Water Resources Minister under Division 1 of Part 8 of the Act—three months; or
- (c) in the case of an application in respect of which public notice is not required under section 39 of the Act—one month; or
- (d) in any other case—two months unless the Authority determines that the application involves matters of special complexity or requires an extended period for consideration of submissions from interested persons, in which case, the period may be extended by the Authority to a period, not exceeding four months, determined by the Authority.

Renewal of environmental authorisations (Section 43)

7. (1) For the purposes of section 43(3) of the Act, an application for renewal of an environmental authorisation must be made not less than—

- (a) the number of days specified by condition of the authorisation before the date of expiry of the authorisation; or
- (b) if the number of days is not so specified—60 days before the date of expiry of the authorisation.

(2) For the purposes of section 43(4) of the Act, the fee for late application for renewal of an environmental authorisation is \$20.00 plus one per cent of the authorisation fee payable on renewal for the first month (or part of a month) for which the application is late and two per cent of that authorisation fee for each further month (or part of a month) for which the application is late.

Annual fees and returns (Section 48)

8. (1) For the purposes of section 48(2)(a) of the Act, the date before which the holder of an environmental authorisation must lodge an annual return with the Authority is the date fixed by the Authority by condition of the authorisation.

(2) For the purposes of section 48(2)(b) of the Act, the date before which the holder of an environmental authorisation must pay the annual authorisation fee to the Authority is the date fixed by the Authority by condition of the authorisation.

(3) For the purposes of section 48(4) of the Act, the penalty for failure to lodge an annual return or pay an annual authorisation fee is \$20.00 plus one per cent of the annual authorisation fee for the first month (or part of a month) for which the default continues and two per cent of the annual authorisation fee for each further month (or part of a month) for which the default continues.

Financial assurances (Section 51)

9. For the purposes of section 51(4) of the Act, the interest payable in respect of an amount representing a pecuniary sum or part of a pecuniary sum that is to be repaid to the holder of an environmental authorisation is to be calculated at a rate one per cent less than the rate earned from investment of the Environment Protection Fund (or the relevant part of the Fund) during the period that the amount has been credited to the Fund.

Reference of applications to Water Resources Minister (Section 64)

10. (1) Pursuant to section 140 of the Act, an application for an environmental authorisation in respect of an activity to be undertaken in a water protection area is exempt from the requirement for reference of the application to the Minister for Water Resources unless the Authority considers that the activity might if authorised involve significant risk of environmental harm to the water resources of the water protection area.

(2) For the purposes of section 64(2) of the Act, the period allowed for a response from the Water Resources Minister in respect of an application for an environmental authorisation referred to that Minister is two months.

(3) Pursuant to section 64(6) of the Act, the Authority must not make a decision on an application referred to the Water Resources Minister without having regard to the response of that Minister.

Authorised officers appointed by councils (Section 85)

11. (1) Pursuant to section 140(5) of the Act, it is declared that a person holding office as an authorised officer by appointment of a council under the *Clean Air Act 1984* immediately before the commencement of the *Environment Protection Act 1993* is to continue in office as an authorised officer under Part 10 of the *Environment Protection Act 1993* subject to the provisions of that Part.

(2) The appointment of an authorised officer referred to in subregulation (1) is subject to the condition that the officer may exercise powers as an authorised officer only in connection with enforcement of the provisions of the *Environment Protection (Burning) Policy 1994* within the area of the council.

(3) The appointment of any authorised officer by a council is subject to—

- (a) the condition that the authorised officer may exercise powers as an authorised officer only within the area of the council; and
- (b) any other condition that the Authority determines to be appropriate.

Powers of authorised officers (Section 87)

12. For the purposes of section 87(3)(a) of the Act, the following are prescribed as vehicles in relation to which an authorised officer may exercise powers of entry and inspection:

7.

- (a) any vehicle used to carry waste; or
- (b) any vehicle used in the course of or in connection with an activity authorised or required to be authorised by an environmental authorisation; or
- (c) any vehicle reasonably suspected of being a vehicle referred to in paragraph (a) or (b).

Warrants (Section 88)

13. For the purposes of section 88(7)(a) of the Act, the form of a notice to be prepared by an authorised officer who executes a warrant is as set out in schedule 1.

Interest on amounts recoverable by the Authority (Sections 95 and 103)

14. For the purposes of section 95(5)(a) or 103(3)(a) of the Act, the prescribed rate of interest per annum on an amount recoverable by the Authority but not paid within the period fixed by the Authority is 24 per cent calculated in respect of each month (or part of a month) for which the amount remains unpaid.

Public Register (Section 109)

15. (1) For the purposes of section 109(1) of the Act, the following further information is required to be recorded in the register:

- (a) such information as the Authority considers appropriate as to the results of tests or monitoring or evaluation undertaken in compliance with conditions of an environmental authorisation under section 52 of the Act;
- (b) such information as the Authority considers appropriate relating to any determination of the Authority under section 58 of the Act;
- (c) copies of any written warnings issued by the Authority in relation to alleged contraventions of the Act;
- (d) details of licences to operate a waste depot issued under the repealed *South Australian Waste Management Commission Act 1979* or the repealed *Waste Management Act 1987*;
- (e) details of licences issued under the repealed *South Australian Waste Management Act 1979* to produce waste of a prescribed kind (within the meaning of that Act);
- (f) details of licences issued under the repealed *Waste Management Act 1987* to produce prescribed waste (within the meaning of that Act);
- (g) details of any records that the former South Australian Waste Management Commission held under the repealed *Waste Management Act 1987* of waste (within the meaning of that Act) being deposited on land between 1 January 1983 and 30 April 1995;
- (h) details of environment performance agreements entered into under the Act (whether before or after the commencement of this paragraph).

Authority may require copy of decision on development applications

16. Where an application for development authorisation is referred to the Authority under the *Development Act 1993*, the relevant authority that determines the application under that Act must, if so required by the Authority by notice in writing, furnish the Authority with a full copy of the relevant authority's decision on the application as soon as practicable (but not later than one month) after the decision is made.

Time limit for applications under transitional provisions (Clause 5, schedule 2)

17. Pursuant to section 140(5) of the Act, an application for the granting of a works approval, licence or exemption as referred to in clause 5(1) or (2) of Schedule 2 of the Act must be lodged with the Authority no later than six months after the commencement of the Act.

Transitional provisions relating to bodies corporate under repealed Acts

18. (1) In this regulation—

"former body corporate" means—

- (a) the Environmental Protection Council established under the *Environmental Protection Council Act 1972*;
- (b) the South Australian Waste Management Commission continued in existence under the *Waste Management Act 1987*.

(2) Pursuant to section 140(5) of the Act, the following provisions apply in relation to a former body corporate:

- (a) the whole of the real and personal property of the former body corporate and all its rights and liabilities are vested in the Authority;
- (b) a reference to a former body corporate in an instrument or in a judgement, order or process of a court will be taken to be a reference to the Authority;
- (c) legal proceedings commenced by or against a former body corporate may be continued by or against the Authority;
- (d) the Registrar-General will, on application by the Authority and on being furnished with such duplicate certificates of title or other documents as the Registrar-General may require, register the Authority as the proprietor of an interest in land vested in the Authority by this regulation.

SCHEDULE 1
Notice of Execution of Warrant
ENVIRONMENT PROTECTION ACT 1993
(Section 88(7))
NOTICE OF EXECUTION OF WARRANT

*TO: The occupier of the place
Address or description of place

or

*TO: The person apparently in charge of the vehicle.....
Description of vehicle

TAKE NOTICE that , a Justice of the Peace,
Name of Justice

did at a.m./p.m. on the day of 19, issue a warrant to
break into or open any part of, or anything in or on—

- *(a) the place at the address or of the description specified above;
- or
- *(b) the vehicle of the description specified above

and that I
Name

an authorised officer under the *Environment Protection Act 1993* did execute the warrant
on the day of 19

- * No property was seized.
- * The following items of property were seized:

.....
.....
.....

Dated this day of 19.....

.....
Signature of abovenamed authorised officer

*Strike out whichever is inapplicable

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last consolidation)

Regulation 3A:	inserted by 4, 1999, reg. 3
Regulation 4AA:	inserted by 50, 1996, reg. 3; redesignated as reg. 4AA in pursuance of the Subordinate Legislation Act 1978
(Incorrectly numbered reg. 4A in Regulation No. 50 of 1996)	
Regulation 4AB:	inserted by 54, 1997, reg. 3
Regulation 4A:	inserted by 49, 1996, reg. 3; substituted by 262, 2000, reg. 3
Regulation 15(1):	varied by 156, 1998, reg. 3
Regulation 18:	inserted by 214, 1994, reg. 3