

South Australia

Environment Protection (General) Regulations 1994

under the *Environment Protection Act 1993*

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Legislative history

1—Short title

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

2—Commencement

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

3—Interpretation

In these regulations—

the Act means the *Environment Protection Act 1993*.

3A—Prescribed national scheme laws

- (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.

4—Environment Protection Fund (section 24)

- (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.

4AA—Prescribed bodies (section 28)

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.

4AB—Prescribed bodies (section 29)

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.

4A—Amendments to environment protection policies (section 32)

- (1) For the purposes of section 32(1)(c) of the Act, the Minister may make changes of the following kinds to the *Environment Protection (Burning) Policy 1994* 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.
- (2) For the purposes of section 32(1)(c) of the Act the Minister may make changes of the following kinds to the *National Environment Protection (Used Packaging Materials) Measure*¹:
 - (a) clause 1 may be substituted so that the name of the policy reflects the fact that it is a policy under the Act;
 - (b) clause 2 may be varied to implement the requirement contained in clause 13 of the policy as in force immediately before the commencement of this regulation;
 - (c) clause 3 may be varied—
 - (i) to insert a definition of ***council***;
 - (ii) to specify the meaning of the term ***mandatory provision***;
 - (d) Parts 3 and 4 may be revoked and new Parts substituted which contain the statutory obligations and reporting and record keeping requirements that participating jurisdictions are required to impose under those Parts as in force immediately before the commencement of this regulation;
 - (e) if, after the commencement of this regulation, the policy is varied by a further national environment protection measure made under the prescribed national scheme laws, any amendments to the policy that are necessary to give effect to the variations may be made.

Note—

- 1 This measure has come into operation as an environment protection policy under section 28A of the Act.

4B—Special provisions relating to transport of controlled waste

- (1) In this regulation—

Commonwealth Act means the *National Environment Protection Council Act 1994* of the Commonwealth, as in force from time to time;

consignment authorisation has the same meaning as in the Controlled Waste Transport Measure;

controlled waste has the same meaning as in the Controlled Waste Transport Measure;

Controlled Waste Transport Measure means the National Environment Protection (Movement of Controlled Waste Between States and Territories) Measure made on 26 June 1998 and as in force from time to time under the Commonwealth Act;

participating State means a participating State, or a participating Territory, within the meaning of the Controlled Waste Transport Measure.

- (2) If—

- (a) a person holds a licence or other similar authority that—

- (i) has been granted by a participating State other than South Australia; and
(ii) is the same as or has a similar effect to an environmental authorisation that authorises the activities specified in clause 3(5) or clause 3(6) (or both) of Part A of Schedule 1 of the Act, and

- (b) the person ensures that a copy of the consignment authorisation obtained in relation to the controlled waste being transported is carried in the vehicle transporting the waste; and
(c) the person ensures that the conditions to which the consignment authorisation is subject (if any) are complied with to the extent that those conditions apply to the transportation of the controlled waste; and
(d) the person complies with the conditions of the person's licence or other authority granted by the participating State, to the extent that those conditions apply to the transportation of the controlled waste,

then to the extent that the person transports controlled waste into or through South Australia from another participating State, or from South Australia to another participating State, the person is exempt from the requirements of section 36 of the Act.

5—Exemptions under Part 6 of Act (section 37)

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
- (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.

6—Time limit for determination of applications for environmental authorisations (section 42)

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.

7—Renewal of environmental authorisations (section 43)

- (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.

8—Annual fees and returns (section 48)

- (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.

9—Financial assurances (section 51)

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.

10—Reference of applications to Water Resources Minister (section 64)

- (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.

11—Authorised officers appointed by councils (section 85)

- (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.

12—Powers of authorised officers (section 87)

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:

- (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).

13—Warrants (section 88)

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 the Schedule.

14—Interest on amounts recoverable by the Authority (sections 95 and 103)

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.

15—Public Register (section 109)

- (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).

16—Authority may require copy of decision on development applications

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.

17—Time limit for applications under transitional provisions (clause 5, Schedule 2)

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.

18—Transitional provisions relating to bodies corporate under repealed Acts

- (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—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..... *am/pm on the day of 20....., 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 20

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

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

Dated this..... day of 20

.....
Signature of abovenamed authorised officer

*Strike out whichever is inapplicable

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
1994	183	<i>Gazette 27.10.1994 p1346</i>	1.5.1995: r 2
1994	214	<i>Gazette 15.12.1994 p2265</i>	1.5.1995: r 2
1996	49	<i>Gazette 4.4.1996 p1921</i>	4.4.1996: r 2
1996	50	<i>Gazette 4.4.1996 p1922</i>	4.4.1996: r 2
1997	54	<i>Gazette 1.5.1997 p1707</i>	1.5.1997: r 2
1998	156	<i>Gazette 2.7.1998 p37</i>	2.11.1998: r 2
1999	4	<i>Gazette 14.1.1999 p409</i>	14.1.1999: r 2
2000	262	<i>Gazette 16.11.2000 p3216</i>	16.11.2000: r 2
2001	3	<i>Gazette 18.1.2001 p150</i>	18.1.2001: r 2
2001	175	<i>Gazette 19.7.2001 p2716</i>	19.7.2001: r 2

Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
r 3A	inserted by 4/1999 r 3	14.1.1999
r 4AA	4A inserted by 50/1996 r 3	4.4.1996
	4A redesignated as r 4AA in pursuance of the <i>Subordinate Legislation Act 1978</i>	4.4.1996
r 4AB	inserted by 54/1997 r 3	1.5.1997
r 4A	inserted by 49/1996 r 3	4.4.1996
	substituted by 262/2000 r 3	16.11.2001
r 4A(1)	varied by 175/2001 r 3(a)	19.7.2001
r 4A(2)	inserted by 175/2001 r 3(b)	19.7.2001
r 4B	inserted by 3/2001 r 3	18.1.2001
r 15		
r 15(1)	varied by 156/1998 r 3	2.11.1998
r 18	inserted by 214/1994 r 3	1.5.1995