

South Australia

Environment Protection (Waste Depot Levy) Variation Regulations 2021

under the *Environment Protection Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Environment Protection (Waste Depot Levy) Variation Regulations 2021*.

2—Commencement

These regulations come into operation on 1 December 2021.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Environment Protection Regulations 2009*

4—Variation of regulation 68A—Interpretation

Regulation 68A(1)—before the definition of *mass balance report* insert:

approved operational use—see regulation 69A;

approved operational use declaration—see regulation 69A(2);

Approved Operational Use Standard means the document of that name published by the Authority, as in force from time to time;

licensee, in relation to a waste depot, means the holder of the licence to conduct the waste depot.

5—Insertion of regulations 69A and 69B

After regulation 69—insert:

69A—Approved operational use

- (1) For the purposes of this Part, an *approved operational use*, in relation to the use of waste or other matter at a waste depot, means—
 - (a) an operational use of a kind approved in relation to specified waste or matter under the *Approved Operational Use Standard*, and that is carried out in accordance with the requirements specified in that Standard; or
 - (b) an operational use that is approved by a declaration made under subregulation (2) (as in force in respect of the depot), and that is carried out in accordance with the conditions or requirements specified in the declaration,

but does not include the use of waste or other matter as cover of landfill at the depot on a daily or more frequent basis.

Examples—

The following are examples of an operational use that may be approved:

- (a) construction or maintenance of internal roads;
- (b) interim cover of landfill (but not cover of landfill on a daily or more frequent basis) where no additional waste will be placed for at least 30 days;
- (c) final capping of landfill cells;
- (d) mulching.

- (2) The Authority may, on application by the holder of a licence to conduct a waste depot or on its own initiative, make a declaration (an ***approved operational use declaration***) that a use of waste or other matter at the depot is an approved operational use only if satisfied that—
- (a) the use of waste or other matter at the depot in the manner proposed is necessary for an operational or environmental management purpose (or purposes); and
 - (b) the type of waste or other matter proposed to be used for the operational use is suitable for that purpose (or those purposes).
- (3) In determining whether to make an approved operational use declaration under this regulation, the Authority must also—
- (a) have regard to, and seek to further, the objects of the Act; and
 - (b) have regard to—
 - (i) the general environmental duty; and
 - (ii) any relevant environment protection policy; and
 - (iii) the waste strategy for the State adopted under the *Green Industries SA Act 2004* (if relevant); and
 - (iv) any relevant reports, assessments, environmental impact statement, public environmental report, Assessment Report, development authorisation or other document or requirement under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*; and
 - (v) any relevant environment improvement programme or agreement.
- (4) A declaration under this regulation—
- (a) must be by notice in writing; and
 - (b) must specify—
 - (i) the type and amount of the waste or other matter to which the declaration applies; and
 - (ii) the purpose and location of the operational use; and
 - (c) may be subject to the following conditions, as specified in the declaration:
 - (i) a condition requiring the operational use to occur in a specified manner or within a specified time frame;
 - (ii) a condition requiring that the waste or other matter to which the declaration applies meets specified chemical or physical properties or complies with specified standards or specifications;

- (iii) a condition requiring plans, specifications or reports in connection with the operational use to be prepared by a person with specified qualifications;
 - (iv) a condition requiring works in connection with the operational use to be carried out by a person with specified qualifications;
 - (v) a condition requiring records relating to the operational use to be kept in a specified manner or form or for a specified period;
 - (vi) a condition requiring such records to be available for inspection by an authorised officer;
 - (vii) such other conditions as the Authority thinks fit; and
- (d) may be varied or revoked by the Authority at any time, by notice in writing to the licence holder, if the Authority is satisfied—
- (i) that a condition of the declaration has been contravened; or
 - (ii) there is potential for environmental harm (or further environmental harm) to occur if an operational use to which the declaration relates were to continue; or
 - (iii) that the declaration was improperly obtained; or
 - (iv) that other circumstances exist, which in the opinion of the Authority, make it necessary or appropriate to do so.

69B—Authority may require further information

A person who makes an application under this Division must provide the Authority with any information required by the Authority in connection with the determination of the application, verified, if the Authority so requires, by statutory declaration.

6—Variation of regulation 70—Waste depot levy (section 113 of Act)

Regulation 70(2)—delete subregulation (2) and substitute:

- (2) Pursuant to section 113(4) of the Act, the penalty for a failure to pay the levy as required under that section is—
 - (a) in a case where the licensee satisfies the Authority that all reasonable and practicable measures were taken to prevent the default from occurring—the higher of \$200 or 2% of the amount due for each month (or part of a month) for which the default continues; or

- (b) in a case where the default is identified and voluntarily reported to the Authority by the licensee before the Authority has notified the licensee of the default—the higher of \$200 or 2% of the amount due for each month (or part of a month) for which the default continues; or
- (c) in a case where both paragraphs (a) and (b) apply—the higher of \$150 or 1.5% of the amount due for each month (or part of a month) for which the default continues; or
- (d) in any other case—the higher of \$350 or 3.5% of the amount due for each month (or part of a month) for which the default continues.

7—Insertion of regulations 75AA and 75AAB

After regulation 75—insert:

75AA—Presumptions and estimates if records are inadequate

- (1) If the Authority is of the opinion that records that relate to waste or other matter received or present at a waste depot during any period (being records required for determining the waste depot levy payable under this Part) are inadequate, and as a result, the Authority is of the opinion it is necessary in order to determine the levy payable, the Authority is entitled to make presumptions and estimates in relation to the waste or matter in accordance with this regulation.
- (2) For the purposes of subregulation (1), without limiting the circumstances in which records will be taken to be inadequate, records relating to a period will be taken to be inadequate if—
 - (a) there are no records relating to waste or other matter received or present at the depot during the period; or
 - (b) the records relating to waste or other matter received or present at the depot during the period are incomplete, inaccurate or inconsistent with other records (whether kept by the licensee, the occupier of the waste depot or another person or body); or
 - (c) the information contained in the records relating to waste or other matter received or present at the depot during the period has not been obtained by methods that, in the opinion of the Authority, are appropriate.
- (3) The Authority is entitled to presume 1 or more of the following in relation to any waste or other matter at the waste depot (subject to the licensee establishing the contrary):
 - (a) that the waste or matter is waste or matter that has been received at the depot;
 - (b) that the waste or matter is waste or matter that has been disposed of to landfill at the depot;

- (c) that the waste or matter has been used at the depot for an operational use other than an approved operational use;
 - (d) that unauthorised stockpiling of the waste or matter has occurred at the depot;
 - (e) that the waste or matter was stockpiled in an area of the depot, or in any manner, in contravention of the relevant licence;
 - (f) that any matters referred to in a preceding paragraph commenced or occurred on the date on which the Authority first became aware that the relevant records were inadequate;
 - (g) that the waste or matter at the waste depot is waste or matter of a specified kind;
 - (h) that the waste or matter has been—
 - (i) generated within metropolitan Adelaide; or
 - (ii) generated from waste or other matter generated in metropolitan Adelaide.
- (4) In estimating the tonnage of waste or other matter received at the waste depot during the period, the Authority must have regard to the following (to the extent considered relevant by the Authority):
- (a) details of any volumetric survey of the depot;
 - (b) details of any stockpile volume assessment at the depot (made using assessment or modelling methodologies approved by the Authority);
 - (c) available records in respect of the depot;
 - (d) any information provided by an authorised officer who has seen or inspected the depot;
 - (e) any information available to the Authority, including images and data from cameras and GPS devices and information from persons not involved with the operation of the depot;
 - (f) any other details provided to the Authority in relation to the depot under regulation 75AAB.

75AAB—Authority may require reports of volumetric surveys or tests or monitoring

- (1) If the Authority has formed an opinion under regulation 75AA that records that relate to waste or other matter received or present at a waste depot during any period are inadequate, the Authority may, by notice in writing, for the purposes of determining the amount of the waste depot levy payable by the licensee of the depot, require the licensee to provide the Authority with 1 or more of the following (as specified in the notice), within a reasonable period of time specified in the notice—
 - (a) details of a volumetric survey (that complies with the requirements of this regulation) of—
 - (i) landfill at the depot; or
 - (ii) any other waste or matter that has been abandoned, stockpiled or used at the depot,

prepared by a licensed or registered surveyor under the *Survey Act 1992* or a person, or person of a class, approved by the Authority; or
 - (b) reports of specified tests or monitoring of—
 - (i) landfill at the depot; or
 - (ii) any other waste or matter that has been abandoned, stockpiled or used at the depot,

including, if the Authority considers it necessary, reports prepared, or tests or monitoring undertaken, by a person with specified qualifications; or
 - (c) any other information required by the Authority in connection with the determination of the amount of the waste depot levy, verified, if the Authority so requires, by statutory declaration.
- (2) A volumetric survey provided to the Authority under subregulation (1) must be in accordance with any other requirements specified by the Authority in the notice.
- (3) It is an offence for a licensee to contravene or fail to comply with the requirements of a notice given by the Authority to the licensee.

Maximum penalty: \$4 000.

Expiation fee: \$300.

8—Variation of Schedule 4—Fees and levy

Schedule 4, Part 2—delete the Part and substitute:

Part 2—Waste depot levy

3—Waste depot levy

- (1) Pursuant to section 113 of the Act (but subject to Part 6 of these regulations and this clause), the prescribed levy payable by the holder of a licence to conduct a waste disposal depot in respect of waste received at the depot is—
- | | |
|---|----------|
| (a) for solid waste— | |
| (i) in the case of a licence holder that is a council that has made an election under regulation 75 (per tonne of solid waste disposed of at the depot) | \$71.50 |
| (ii) in the case of the holder of a licence to conduct a landfill depot or incineration depot (not being a licence holder referred to in subparagraph (i)) (per tonne of designated solid waste disposed of, used or handled at the depot)— | |
| (A) if the depot is situated outside of metropolitan Adelaide and the waste has been brought to the depot by or on behalf of premises where the waste was generated situated outside of metropolitan Adelaide | \$71.50 |
| (B) if the depot is situated within metropolitan Adelaide and the waste has been brought to the depot by or on behalf of a council the area of which lies wholly outside of metropolitan Adelaide | \$71.50 |
| (C) in any other case | \$143.00 |
| (b) for liquid waste (per kilolitre disposed of at the depot) | \$39.02 |

- (2) If under the licence the waste disposal depot is required to cover landfill at the depot with material on a daily or more frequent basis, the amount of the levy payable in respect of the waste under subclause (1)(a)(ii) is to be subject to a deduction calculated in accordance with the following formula:

$$PCD \times W \times LR$$

where—

PCD is the percentage cover deduction of 10%

W is the total amount of designated solid waste (in tonnes) disposed of (including any waste used as cover for landfill) at the depot in the relevant period

LR is the average levy rate paid per tonne of solid waste disposed of at the depot in the relevant period (excluding any solid waste in respect of which payment of all or part of the levy is waived or refunded under section 116 of the Act).

Note—

To the extent to which the calculation of the levy payable under this clause following the application of the deduction under this subclause results in an amount that is less than \$0, that amount, to the extent that it is less than \$0, is to be disregarded and may not be carried over to another period.

- (3) For the purposes of this clause, *designated solid waste* means the following solid waste (including waste fill):
- (a) solid waste disposed of at the depot;
 - (b) solid waste used as cover for landfill at the depot on a daily or more frequent basis;
 - (c) solid waste used at the depot for an operational use, other than an approved operational use;
 - (d) solid waste that is the subject of unauthorised stockpiling at the depot;
 - (e) solid waste that has been stockpiled at the depot in contravention of the relevant licence.
- (4) In this clause—
- approved operational use* has the same meaning as in regulation 69A;
- incineration depot* means a depot, facility or works referred to in Schedule 1 Part A clause 3(3)(c) of the Act;
- landfill depot* means a depot, facility or works referred to in Schedule 1 Part A clause 3(3)(a) of the Act;
- waste disposal depot* means a depot, facility or works referred to in Schedule 1 Part A clause 3(3) of the Act.

Made by the Governor

with the advice and consent of the Executive Council
on 18 February 2021
No 16 of 2021