

Western Australia

Waste Avoidance and Resource Recovery Act 2007

**Waste Avoidance and Resource Recovery
Regulations 2008**

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Waste Avoidance and Resource Recovery Regulations 2008

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Waste Avoidance and Resource Recovery Regulations 2008

Part 1 — Preliminary

1. Citation

These regulations are the *Waste Avoidance and Resource Recovery Regulations 2008*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 July 2008.

3. Term used in these regulations

In these regulations —

approved means approved by the CEO in writing.

4. Extended meaning of “local government waste”

Waste generated by the operations of a local government is prescribed as local government waste for the purposes of paragraph (b) of the definition of “local government waste” in section 3(1) of the Act.

Part 2 — Waste collection permits

5. Advertisement for applications

- (1) Subject to subregulation (3), if the CEO proposes to issue a waste collection permit, the CEO must advertise the proposal, inviting any person who wishes to apply for the permit to do so within the period specified in the advertisement.
- (2) The advertisement must be published in a newspaper circulating in the local government district in relation to which the waste collection permit is proposed to be issued.
- (3) If the CEO is of the opinion that there is an urgent need to issue a waste collection permit in order to remove the risk of harm to human health or the environment, the CEO is not required to comply with subregulation (1) but must invite not less than 3 potential applicants to apply for the permit.
- (4) An invitation under subregulation (1) or (3) to apply for a waste collection permit must include the following information, or specify where that information can be found —
 - (a) the area or premises where the collection of local government waste is required;
 - (b) the nature of the local government waste to be collected;
 - (c) the nature of the waste service (including the standard to be achieved);
 - (d) the required frequency of the waste service.

6. Application for waste collection permit

- (1) An application for a waste collection permit must —
 - (a) be made in the approved manner and form; and
 - (b) be accompanied by an application fee of \$275; and
 - (c) include an undertaking to provide the required waste service if the permit is issued to the applicant; and
 - (d) include details of the following —

- (i) how the waste will be collected;
 - (ii) how the waste collected will be dealt with;
 - (iii) the proposed mechanisms and amounts of charges for the waste service;
 - (iv) the impact of the proposed waste service on existing waste services to other premises in the local government district;
 - (v) the extent to which, and the means by which, the applicant proposes to use resources such as plant, equipment and staff that were used by the local government to provide waste services in the local government district;
 - (vi) how the applicant proposes to meet the standards set by the CEO in respect of the waste service and the frequency of the waste service;
 - (vii) any other information relevant to the application that the CEO reasonably requires.
- (2) The CEO must decline to deal with an application that does not comply with subregulation (1) and advise the applicant accordingly.
- (3) Before issuing a waste collection permit the CEO must, in addition to the consultation required under section 58 of the Act, seek and have regard to any recommendations and advice on the issue of the permit from —
- (a) any person that —
 - (i) pursuant to a contract provides a waste service on behalf of the local government in the district in relation to which the waste collection permit is to be issued; and
 - (ii) will, in the opinion of the CEO, be directly affected by the issue of the waste collection permit;
- and

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- (b) any public authority that, in the opinion of the CEO, will be directly affected by the issue of the waste collection permit.
- (4) If an application complies with subregulation (1), the CEO must, after consultation as required under section 58 of the Act and subregulation (3) —
 - (a) issue the waste collection permit; or
 - (b) refuse to issue the waste collection permit.
- (5) Subject to section 56(2) of the Act, the CEO is to issue the waste collection permit to the applicant the CEO considers to be the most acceptable having regard to —
 - (a) the waste strategy, the business plan and the relevant waste plan; and
 - (b) the ability of the applicant to provide the required waste service; and
 - (c) the value of, and charges for, the waste service the applicant proposes to provide.
- (6) If the CEO refuses to issue a waste collection permit to an applicant, the CEO must give the applicant written notice of the refusal.

[Regulation 6 amended in Gazette 1 Jul 2011 p. 2718-19.]

7. Waste collection permit conditions

- (1A) In this regulation —
specified means specified in the waste collection permit.
- (1) A waste collection permit may be issued or renewed subject to such conditions as the CEO considers necessary or convenient for the purposes of the Act.
- (2A) Without limiting subregulation (1), the conditions to which a waste collection permit may be subject include the following —
 - (a) that the permit operates in respect of a specified area;

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- (b) that the permit holder must collect waste at a specified frequency or at specified dates and times;
 - (c) that the permit holder must collect all, or specified categories of, waste in a specified manner or in containers of a specified type;
 - (d) that the permit holder must keep specified records as to the quantity and type of waste collected;
 - (e) that the permit holder must provide reports to the CEO as to the manner in which waste is collected and the quantity and type of waste collected as requested by the CEO;
 - (f) that the permit holder must comply with a specified code of practice made by the Waste Authority under section 52 of the Act.
- (2) The CEO must not attach a condition that would, in the CEO's opinion, be seriously at variance with the waste strategy or the current business plan.
 - (3) The holder of a waste collection permit who contravenes a condition to which the permit is subject (other than a condition to which section 71(2) of the Act applies) commits an offence.
Penalty: a fine of \$10 000.

[Regulation 7 amended in Gazette 1 Jul 2011 p. 2719-20.]

8. Amendment of waste collection permit

- (1) The CEO may amend a waste collection permit by —
 - (a) removing or varying any condition to which the permit is subject; or
 - (b) subjecting the permit to a new condition; or
 - (c) correcting in the permit —
 - (i) a clerical mistake or unintentional error or omission; or
 - (ii) a figure which has been miscalculated; or

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- (iii) the misdescription of any person, thing, area, property or activity;
 - or
 - (d) making an administrative change to the format of the permit which does not alter the obligations of the permit holder; or
 - (e) amending the permit in conformity with an exemption conferred under this Act; or
 - (f) extending the duration of the permit.
- (2) A waste collection permit may be amended on application by the holder of the permit or on the initiative of the CEO.

9. Renewal of waste collection permit

- (1) The holder of a waste collection permit may apply to the CEO to renew the permit.
- (2) The application must be made before the waste collection permit expires.
- (3) Regulation 6 applies, with any necessary changes, to an application under this regulation.

10. Surrender of waste collection permit

- (1) The holder of a waste collection permit may apply to the CEO to surrender the permit.
- (2) The CEO may, on an application under subregulation (1), accept the surrender of the permit if the CEO is satisfied that there are alternative arrangements reasonably available to ensure that waste collection in the area in which the permit operates is adequate and consistent with modern practice.
- (3) A waste collection permit ceases to have effect from the day on which the CEO accepts the surrender of the permit.

[Regulation 10 inserted in Gazette 1 Jul 2011 p. 2720.]

11. Manner of amendment

- (1) An application for an amendment to a waste collection permit or to surrender a waste collection permit is to —
 - (a) be made in the approved manner and form; and
 - (b) be accompanied by a fee of \$100; and
 - (c) be supported by any documents and information required by the CEO.
- (2) Before amending, or refusing to accept the surrender of, a waste collection permit the CEO must give the holder of the permit a written notice under this regulation.
- (3) The notice must —
 - (a) state details of the proposed action; and
 - (b) invite the holder to make representations to the CEO to show why the action should not be taken; and
 - (c) state the period (at least 28 days after the notice is given to the holder) within which representations may be made.
- (4) The representations must be made in writing.²
- (5) The CEO may take the proposed action —
 - (a) at any time after the holder of the waste collection permit gives the CEO written notice that the holder does not intend to make any representations or any further representations; or
 - (b) if such notice is not given, after the end of the period stated in the notice within which representations may be made.
- (6) The CEO must consider any representations properly made by the holder of the waste collection permit.
- (7) The CEO must give the holder of the waste collection permit written notice —

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- (a) of any amendment of the permit; or
 - (b) if the CEO refuses to accept the surrender of the permit.
- (8) Without limiting subregulation (7), notice of an amendment can be given in the form of a revised waste collection permit.

[Regulation 11 amended in Gazette 1 Jul 2011 p. 2720.]

12. Local government to be notified of decisions in relation to waste collection permit

When the CEO issues, renews, amends, or accepts the surrender of, a waste collection permit the CEO must notify the local government in the district of which the waste collection is carried out.

[Regulation 12 amended in Gazette 1 Jul 2011 p. 2721.]

13. Particulars of permits to be recorded

- (1) The CEO must keep a record of the following particulars for waste collection permits —
- (a) the name and address of the permit holder;
 - (b) the waste service to which the permit relates;
 - (c) the conditions to which the permit is subject;
 - (d) the period during which the permit is in force.
- (2) The CEO must publish all of the particulars referred to in subregulation (1), other than the address of the permit holder, for permits that are in force —
- (a) in a newspaper circulating daily in the State; and
 - (b) on the department's website on the internet.

Part 3 — Landfill levy

14. Terms used in this Part

(1) In this Part —

liable person means a person who is —

- (a) a licensee; or
- (b) the occupier of the premises that would, if the person held a licence in respect of the premises as required under the EP Act, be a licensed landfill;

licensed landfill means premises specified in category 63, 64 or 65 of the *Environmental Protection Regulations 1987* Schedule 1 in respect of which a licence is held;

licensee means the holder of a licence in respect of a licensed landfill;

return period means —

- (a) in the case of a person who on 1 July 2008 is a liable person, the following periods —
 - (i) 1 July — 30 September;
 - (ii) 1 October — 31 December;
 - (iii) 1 January — 31 March;
 - (iv) 1 April — 30 June;and
- (b) in the case of a person who after 1 July 2008 becomes a liable person, the following periods —
 - (i) the period beginning on the date the person becomes a liable person and ending on the September 30, December 31, March 31 or June 30 immediately next following, whichever is the sooner;
 - (ii) each 3 month period next following the period referred to in subparagraph (i).

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- (2) A reference in this Part to a category followed by a designation is a reference to the category so designated in the first column of the *Environmental Protection Regulations 1987* Schedule 1.

15. Financial assurance — payment of levy

- (1) Each licensee (other than a local government) must provide to the CEO, in accordance with subregulation (3), a financial assurance —
- (a) in an approved manner and form; and
 - (b) that secures or guarantees payment of an amount determined by the CEO, being an amount that in the opinion of the CEO is equivalent to the average levy to be paid by the liable person in a return period.

Penalty: a fine of \$10 000.

- (2) The CEO may permit the financial assurance to be paid in monthly instalments over a period of 3 months.
- (3) The financial assurance, or the first monthly instalment of the financial assurance, as the case requires, must be provided to the CEO not later than 2 weeks after the licence is granted.
- (4) The CEO may call on or use the financial assurance and pay the moneys into the WARR Account if the levy is not paid by the licensee in accordance with regulation 18.
- (5) A licensee in respect of whom a financial assurance under the *Environmental Protection Regulations 1987* regulation 28 is current on the day this regulation comes into operation is taken to have provided a financial assurance under this regulation on the same terms and conditions.

16. Maintenance and review of financial assurance

- (1) A person that provides a financial assurance under regulation 15 must maintain the financial assurance in accordance with any requirements of the CEO of which the person has been given written notice.

Penalty: a fine of \$10 000.

- (2) The CEO must review the amount of a financial assurance not later than 12 months after it is provided and not later than 12 months after each time it is last reviewed.
- (3) The CEO may at any time, by written notice —
 - (a) require a person that has provided a financial assurance under regulation 15 to increase the amount of the financial assurance provided; or
 - (b) permit a person that has provided a financial assurance under regulation 15 to reduce the amount of the financial assurance provided,

if the CEO thinks it is appropriate to do so.

- (4) A person must comply with a requirement in a notice given to the person under subregulation (3)(a).

Penalty: a fine of \$10 000.

17. Records

- (1) Upon receiving waste at a licensed landfill, the licensee must make a record in accordance with this regulation.
- (2) The record must be in an approved form and must show the following —
 - (a) the time and date of the delivery;
 - (b) the name and licence number of the licensee;
 - (c) in the case of a category 63 licensed landfill, the volume of the waste disposed of to landfill on the premises calculated in accordance with the *Waste Avoidance and Resource Recovery Levy Regulations 2008* regulation 10 or 11;
 - (d) in the case of a category 64 or 65 licensed landfill, the weight of the waste as weighed or estimated in accordance with the *Waste Avoidance and Resource Recovery Levy Regulations 2008* regulation 8 or 9;

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- (e) a description of the type of waste;
 - (f) the amount of levy payable in respect of the waste;
 - (g) any other particulars relevant to the calculation or verification of the amount of the levy payable by the licensee that the CEO, by written notice to the licensee, requires the licensee to include.
- (3) A licensee must keep any record made by the licensee under this regulation in a legible written form, or so as to be readily convertible into such a form, for a period of not less than 5 years from the day on which the record was made.
- (4) A licensee must make the records available to an authorised person within 24 hours of being requested by the authorised person to do so.²
- (5) In subregulation (4) —
- authorised person*** means a person appointed under the EP Act section 87 for the purposes of the Act and includes the CEO.
- (6) A licensee who —
- (a) contravenes subregulation (1), (3) or (4); or
 - (b) makes a record under this regulation which is false in a material particular,

commits an offence.

Penalty: a fine of \$10 000.

[Regulation 17 amended in Gazette 1 Jul 2011 p. 2721.]

18. Return and payment of levy

- (1) The levy is payable —
- (a) by a licensee not later than 28 days after the end of each return period; and
 - (b) in any other case, not later than 28 days after the liable person is notified in writing by the CEO that a levy of the amount specified in the notice is payable.

- (2) A licensee, from the details entered in the records referred to in regulation 17 and any estimate made under the *Waste Avoidance and Resource Recovery Levy Regulations 2008* regulation 9 or 11, must —
- (a) make a return in the approved form in respect of each return period setting out details of waste received; and
 - (b) lodge the return with the CEO.

Penalty: a fine of \$2 000.

- (3) The return must be accompanied by a remittance for the amount of the levy payable on the waste to which that return relates.

[19. Deleted in Gazette 1 Jul 2011 p. 2721.]

Part 4 — Miscellaneous

20. Waste plans

For the purposes of section 40(3)(i) of the Act the following matters are prescribed —

- (a) an assessment of the significant sources of waste generated by the operations of the local government;
- (b) an assessment of the quantities and classes of waste generated by the operations of the local government;
- (c) an assessment of the services, markets and facilities for waste generated by the operations of the local government;
- (d) an assessment of the options for reduction, management and disposal of waste generated by the operations of the local government;
- (e) proposed strategies and targets for managing and reducing waste generated by the operations of the local government;
- (f) proposed strategies and targets for the efficient disposal of waste generated by the operations of the local government that cannot be recovered, reused or recycled;
- (g) an implementation programme that identifies the required action, timeframes, resources and responsibilities for achieving these strategies and targets.

21. Public inspection of adopted codes and subsidiary legislation

For the purposes of section 98(4) of the Act, any code or subsidiary legislation adopted as referred to in section 98(2) of the Act will be available for public inspection during normal office hours at the Department's head office.

Part 5 — Amendments and transitional provision

22. *Environmental Protection Regulations 1987* amended

- (1) The amendments in this regulation are to the *Environmental Protection Regulations 1987*.
- (2) Regulation 22 is amended by inserting before “Subject” the subregulation designation “(1)”.
- (3) At the end of regulation 22 the following subregulation is inserted —

“

- (2) This Part does not apply to —
 - (a) waste received at licensed landfills on or after 1 July 2008; and
 - (b) return periods commencing on or after 1 July 2008.

”.

- (4) Regulation 33 is repealed and the following regulation is inserted instead —

“

33. **Payment of levy as condition of licence (section 62(2))**

It is a condition of a licence in respect of a licensed landfill that the licensee is to pay the following —

- (a) any levy imposed under the *Environmental Protection (Landfill) Levy Act 1998* in respect of waste to which this Part applies that is received at those premises;

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- (b) any levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007* in respect of waste to which the *Waste Avoidance and Resource Recovery Regulations 2008* Part 3 applies that is received at those premises.

”.

23. *Environmental Protection (Controlled Waste) Regulations 2004* amended

- (1) The amendment in this regulation is to the *Environmental Protection (Controlled Waste) Regulations 2004*.
- (2) Regulation 2 is amended in the definition of “disposal site” by deleting paragraph (b).

24. *Transitional provision — Waste Management and Recycling Fund*

The *Waste Avoidance and Resource Recovery Act 2007* Schedule 5 clause 6 prevails to the extent that there is an inconsistency between that provision and Part VIIA Division 2 of the EP Act.

Notes

¹ This is a compilation of the *Waste Avoidance and Resource Recovery Regulations 2008* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Waste Avoidance and Resource Recovery Regulations 2008</i>	20 Jun 2008 p. 2665-84	r. 1 and 2: 20 Jun 2008 (see r. 2(a)) Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b))
<i>Waste Avoidance and Resource Recovery Amendment Regulations 2011</i> ²	1 Jul 2011 p. 2718-21	r. 1 and 2: 1 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Jul 2011 (see r. 2(b))

² The amendment in the *Waste Avoidance and Resource Recovery Amendment Regulations 2011* r. 9(2) is not included because it was unclear where the amendment was intended to be made.