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WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2007

WASTE AVOIDANCE AND RESOURCE RECOVERY REGULATIONS 2008

Western Australia

Waste Avoidance and Resource Recovery Regulations 2008

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Waste Avoidance and Resource Recovery Act 2007

Waste Avoidance and Resource Recovery Regulations 2008

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

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.

Waste Avoidance and Resource Recovery Regulations 2008**Part 2** Waste collection permits**r. 5**

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) include —
 - (i) an undertaking to provide the required waste service if the permit is issued to the applicant; and

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Waste collection permits

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- (ii) details of how the waste collected will be dealt with; and
 - (iii) details of the proposed mechanisms and amounts of charges for the waste service;and
 - (c) be accompanied by an application fee of \$275; and
 - (d) be supported by any other documents and information required by the CEO.
- (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
 - (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.

Waste Avoidance and Resource Recovery Regulations 2008**Part 2** Waste collection permits**r. 7**

- (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.

7. Waste collection permit conditions

- (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.
- (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.

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

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Waste collection permits

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- (c) correcting in the permit —
 - (i) a clerical mistake or unintentional error or omission; or
 - (ii) a figure which has been miscalculated; or
 - (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. Revocation or suspension of waste collection permit

- (1) The CEO may revoke or suspend a waste collection permit.
- (2) The grounds for revocation or suspension of a waste collection permit are that —
 - (a) the CEO is satisfied that there has been a breach of any of the conditions to which the permit is subject; or

Waste Avoidance and Resource Recovery Regulations 2008**Part 2** Waste collection permits**r. 11**

- (b) information contained in or supporting the application for the permit was false or misleading in a material respect; or
- (c) the holder of the permit has applied to the CEO to surrender the permit.

11. Manner of amendment, revocation or suspension

- (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, revoking or suspending 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.
- (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

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Waste collection permits

Part 2**r. 12**

- (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 of any amendment, revocation or suspension of the permit.
- (8) Without limiting subregulation (7), notice of an amendment can be given in the form of a revised waste collection permit.

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

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

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.

Waste Avoidance and Resource Recovery Regulations 2008**Part 3** Landfill levy**r. 14**

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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Landfill levy

Part 3**r. 15**

- (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.

Waste Avoidance and Resource Recovery Regulations 2008**Part 3** Landfill levy**r. 17**

- (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;

Waste Avoidance and Resource Recovery Regulations 2008

Landfill levy

Part 3**r. 18**

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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 the CEO may, by written notice to the licensee, require 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.
- (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.

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.

Waste Avoidance and Resource Recovery Regulations 2008**Part 3** Landfill levy**r. 19**

- (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. Audit

- (1) In this regulation —
“**specified**” means specified in the notice.
- (2) The CEO may at any time, by notice in writing, direct a licensee to cause —
- (a) an audit of —
 - (i) the amount of waste receive at the licensed landfill within a specified period; and
 - (ii) the amount of levy payable in respect of that waste,
to be carried out by a person from a specified class of persons; and
 - (b) a report to be prepared on the audit by the person who carried out the audit.
- (3) The licensee must provide a copy of the report of the audit, certified as correct by the person who carried out the audit, to the CEO within the specified period.

Penalty: a fine of \$2 000.

Waste Avoidance and Resource Recovery Regulations 2008

Landfill levy

Part 3**r. 19**

- (4) If the licensee does not comply with the notice the CEO may cause the audit to be conducted and call on or use the financial assurance provided by the licensee under regulation 15 to cover any costs incurred.
- (5) A person aggrieved by a decision to give a direction under subregulation (2) may apply to the State Administrative Tribunal for a review of the decision.

Waste Avoidance and Resource Recovery Regulations 2008**Part 4** Miscellaneous**r. 20**

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.

Waste Avoidance and Resource Recovery Regulations 2008
Amendments and transitional provision **Part 5**

r. 22

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;

Waste Avoidance and Resource Recovery Regulations 2008**Part 5** Amendments and transitional provision**r. 23**

- (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.

By Command of the Lieutenant-Governor and deputy of the Governor,

G. M. PIKE, Clerk of the Executive Council.
