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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL
PROTECTION (NEPM-UPM)
REGULATIONS 2013**

Western Australia

Environmental Protection (NEPM-UPM) Regulations 2013

CONTENTS

Part 1 — Preliminary

1. Citation
2. Commencement
3. Terms used
4. Purpose

Part 2 — Responsibilities of certain brand owners

Division 1 — Application

5. Application of this Part

Division 2 — Action plans

6. Action plans
7. Approval of action plans
8. Review of action plans

Division 3 — Targets

9. Targets

Division 4 — Record keeping

10. Brand owner to keep information

Division 5 — Compliance notice

11. Authorised person may give notice to comply

Part 3 — Operators of materials recovery systems to give information to the CEO

12. Local governments

Environmental Protection (NEPM-UPM) Regulations 2013**Contents**

13. Other operators

Part 4 — Appeals

14. Appeals

Part 5 — Effect of review of measure

15. Revocation, variance or replacement of measure

Environmental Protection Act 1986

Environmental Protection (NEPM-UPM) Regulations 2013

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Environmental Protection (NEPM-UPM) Regulations 2013*.

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 the day after that day.

3. Terms used

In these regulations, unless the contrary intention appears —

brand owner means —

- (a) a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or
- (b) a person who is the franchisee in Australia of a business arrangement which allows an individual, partnership or

Environmental Protection (NEPM-UPM) Regulations 2013**Part 1** Preliminary**r. 3**

company to operate under the name of an already established business; or

- (c) in the case of a product which has been imported, the first person to sell that product in Australia; or
- (d) in respect of in-store packaging, the supplier of the packaging to the retailer; or
- (e) in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer at the point of sale for the transportation of products purchased by the consumer;

consumer packaging means all packaging products, including distribution packaging, made of any material, or combination of materials, for the containment, protection, marketing or handling of consumer products;

Covenant means the Australian Packaging Covenant of July 2010;

distribution packaging means packaging that contains multiples of products (the same or mixed) intended for direct consumer purchase, including —

- (a) secondary packaging used to secure or unitise multiples of consumer products such as a cardboard box, shipper and shrink film over wrap; and
- (b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film, shrink film and strapping;

landfill means —

- (a) a landfill site set apart by a local government under the *Health Act 1911* section 119; or
- (b) a landfill site required to be licensed under the Act Part V, whether or not that licence is in force; or
- (c) premises to which the *Environmental Protection (Rural Landfill) Regulations 2002* apply;

Environmental Protection (NEPM-UPM) Regulations 2013

Preliminary

Part 1

r. 3

materials recovery system means a system to collect, sort and pre-process materials recovered from the waste stream, including but not limited to —

- (a) the roadside collection of domestic solid waste separated for the purpose of recycling or for otherwise using the materials so separated; or
- (b) a drop-off collection system; or
- (c) a public place collection; or
- (d) an industrial or commercial recycling collection system;

plastic bag includes a single use lightweight plastic carry bag made from virgin or recycled plastic;

premises means residential, industrial or other premises to which a receptacle for the collection of recyclable material has been delivered by the operator of a materials recovery system;

recovery rate, in relation to a type of consumer packaging listed in column 1 of the Tables to regulation 9(1) and (2), means the rate determined using the equation —

$$R = \frac{WR}{WS} \times 100\%$$

where —

R is the recovery rate;

WR is the weight of the consumer packaging recovered from the post-consumer waste stream;

WS is the weight of the consumer packaging sold as packaging within Australia;

recyclable material means material reasonably able to be recovered, reprocessed and used as raw material for the manufacture of a new product;

recycle means recover a thing and use it as a raw material to produce another thing;

Environmental Protection (NEPM-UPM) Regulations 2013**Part 1** Preliminary**r. 4**

reuse means use a thing for the same or similar purpose as the original purpose without subjecting the thing to a manufacturing process which would change its physical appearance;

secondary resource means a resource used or to be used —

- (a) to manufacture new consumer packaging or another product to replace raw or virgin materials; or
- (b) for energy recovery;

signatory means a signatory to the Covenant, and includes an organisation that accedes to the Covenant after it is made, whether before or after the commencement of these regulations.

4. Purpose

The purpose of these regulations is to require certain acts to be done for the purpose of implementing the NEPM cited as the *National Environment Protection (Used Packaging Materials) Measure 2011*.

Environmental Protection (NEPM-UPM) Regulations 2013Responsibilities of certain brand owners **Part 2**Application **Division 1****r. 5****Part 2 — Responsibilities of certain brand owners****Division 1 — Application****5. Application of this Part**

This Part applies to a brand owner other than a brand owner —

- (a) who is a signatory to and complies with the Covenant; or
- (b) who is not a signatory but the CEO is satisfied that the brand owner uses consumer packaging in which the brand owner's products are sold in a way that achieves environmental outcomes at least equivalent to the environmental outcomes for the packaging under the Covenant; or
- (c) who does not contribute significantly to the waste stream; or
- (d) the value of whose annual sales of the brand owner's products is not more than \$5 million.

Division 2 — Action plans**6. Action plans**

- (1) A brand owner to which this Part applies must prepare and submit an action plan to the CEO —
 - (a) within 6 months of the commencement of these regulations or within 6 months of becoming a brand owner to which this Part applies, whichever is the later; or
 - (b) within 2 months of being required under regulation 8(2) to prepare and submit an action plan.

Penalty: a fine of \$5 000.

- (2) A person who commits an offence under subregulation (1) is guilty of a separate and further offence in respect of each month

Environmental Protection (NEPM-UPM) Regulations 2013**Part 2** Responsibilities of certain brand owners □**Division 2** Action plans □**r. 6**

after the day of conviction during which the failure to prepare and submit an action plan continues and is liable in respect of each separate and further offence to a penalty of \$5 000.

- (3) The action plan must contain the following information —
- (a) how the brand owner intends to ensure that consumer packaging in which the brand owner's products are sold (***owner's packaging***), or consumer packaging that is substantially similar to the owner's packaging, is —
 - (i) recovered; and
 - (ii) reused, recycled or used for energy recovery;
 - (b) the quantity of each type of consumer packaging to be —
 - (i) recovered; and
 - (ii) reused, recycled or used for energy recovery;
 - (c) the recovery rate for each type of consumer packaging to be recovered;
 - (d) how the brand owner intends to inform the public of the way in which the consumer packaging may be recovered.

Penalty: a fine of \$5 000.

- (4) The recovery rate referred to in subregulation (3)(c) must be at least equivalent to the recovery rate for that particular type of consumer packaging specified in regulation 9.
- (5) The action plan must state —
- (a) that all consumer packaging to be recovered by or for the brand owner will be reused, recycled or used for energy recovery in the following order (the ***preferred order***) —
 - (i) for reuse in the packaging of the brand owner's own products;
 - (ii) for use within the State as a secondary resource;

Environmental Protection (NEPM-UPM) Regulations 2013

Responsibilities of certain brand owners □

Part 2

Action plans □

Division 2**r. 7**

- (iii) for use within Australia as a secondary resource;
 - (iv) for export as a secondary resource;
- or
- (b) if the brand owner considers it will be impracticable to reuse, recycle or use for energy recovery the materials in the preferred order —
 - (i) reasons why the brand owner considers the preferred order impracticable; and
 - (ii) the order in which the materials will be reused, recycled or used for energy recovery.
- (6) A brand owner to which this Part applies must —
- (a) prepare, maintain and implement an action plan; and
 - (b) comply with the plan.

Penalty: a fine of \$5 000.

7. Approval of action plans

- (1) If a person submits an action plan to the CEO under regulation 6(1), the CEO may —
 - (a) require that further particulars be supplied in relation to the action plan; or
 - (b) approve the plan; or
 - (c) reject the plan.
- (2) If the CEO rejects an action plan, the CEO is to give the person who submitted it written notice of the rejection and the reasons for rejecting it.

8. Review of action plans

- (1) The CEO may review an action plan approved under regulation 7(1)(b) and cancel the action plan.
- (2) If an action plan is cancelled, the CEO is to give the brand owner written notice of the decision to cancel it and may by the written notice require the brand owner to prepare and submit to

Environmental Protection (NEPM-UPM) Regulations 2013**Part 2** Responsibilities of certain brand owners□**Division 3** Targets□**r. 9**

the CEO, within the time specified in the notice, an action plan for approval.

Division 3 — Targets**9. Targets**

- (1) Subject to subregulation (2), a brand owner to which this Part applies must ensure that in each financial year the recovery rate for the type of its consumer packaging listed in column 1 of the Table is not less than that listed in column 2 of that Table opposite the type of consumer packaging.

Penalty: a fine of \$5 000.

Table

Consumer packaging	Recovery rate
Aluminium	75%
Glass	60%
Paper and cardboard	80%
Plastics: high-density polyethylene (HDPE)	60%
Plastics: polyethylene terephthalate (PET)	60%
Plastics other than high-density polyethylene (HDPE) and polyethylene terephthalate (PET)	35%
Steel	65%

- (2) A brand owner to which this Part applies must ensure that, by the start of the 2015 financial year, the recovery rate for all of its consumer packaging is not less than 70%.

Penalty: a fine of \$5 000.

Environmental Protection (NEPM-UPM) Regulations 2013Responsibilities of certain brand owners **Part 2**Record keeping **Division 4****r. 10****Division 4 — Record keeping****10. Brand owner to keep information**

(1) In this regulation —

consumer packaging material means the principal components of the container and does not include incidental components, such as labels or closures.

(2) A brand owner to which this Part applies must, for each financial year, keep for at least 5 years the following information for consumer packaging material used by the brand owner in the financial year —

- (a) the total weight of consumer packaging material used by material type;
- (b) the number of units of consumer packaging material by unit and material type;
- (c) the total weight of consumer packaging material recovered by material type;
- (d) the total weight of recovered consumer packaging material reused and recycled in Australia by material type;
- (e) the total weight of recovered consumer packaging material reused and recycled by material type through export;
- (f) the total kilojoules of embedded energy recovered;
- (g) the total weight of recovered consumer packaging material disposed of at a landfill site;
- (h) how consumers have been advised as to how consumer packaging material is to be recovered.

Penalty: a fine of \$5 000.

Environmental Protection (NEPM-UPM) Regulations 2013**Part 2** Responsibilities of certain brand owners□**Division 5** Compliance notice□**r. 11**

- (3) A brand owner to which this Part applies must, if requested in writing by the CEO, give the information mentioned in subregulation (2) to the CEO within 28 days after the day the CEO requests it.

Penalty: a fine of \$5 000.

Division 5 — Compliance notice**11. Authorised person may give notice to comply**

- (1) If an authorised person believes on reasonable grounds that a brand owner has contravened regulation 6 or 10, the authorised person may give the brand owner a written notice under this regulation.
- (2) The notice must state —
- (a) the act or omission comprising the contravention; and
 - (b) the action the brand owner may take to rectify the alleged contravention; and
 - (c) the day by which the brand owner must take the action.
- (3) The stated day must be at least 2 months after the notice is given to the brand owner.
- (4) A brand owner must comply with the notice unless the brand owner has a reasonable excuse for not complying with it.
- Penalty: a fine of \$5 000.
- (5) A brand owner cannot be prosecuted for an alleged contravention of regulation 6 or 10 unless the brand owner —
- (a) is given a notice under subregulation (1); and
 - (b) does not comply with the notice.

Environmental Protection (NEPM-UPM) Regulations 2013Operators of materials recovery systems to give information to
the CEO**Part 3****r. 12****Part 3 — Operators of materials recovery systems to
give information to the CEO****12. Local governments**

- (1) This regulation applies to a local government if, in its district under the *Local Government Act 1995*, it operates a materials recovery system.
- (2) The local government must, within 2 months after the end of each financial year in which the service operates, give to the CEO the following information relating to its district for the year —
 - (a) what percentage of premises is covered by the system;
 - (b) the number of premises participating in the system, expressed as a proportion of the number of premises to which the service is available;
 - (c) the number of premises covered by the system and whether the premises are residential or non-residential;
 - (d) the fee (if any) charged in relation to each premises for the system;
 - (e) the total weight of recyclable material collected by the system by material type;
 - (f) if the material collected is sorted —
 - (i) the total weight of each material type sold or sent for reuse, recycling or energy recovery; and
 - (ii) the total weight of the residual fraction of each material type disposed of at a landfill site.

13. Other operators

- (1) This regulation applies where a local government or group of local governments has a new or novated contract with a person to operate a materials recovery system.

Environmental Protection (NEPM-UPM) Regulations 2013

Part 3 Operators of materials recovery systems to give information to the CEO□

r. 13

- (2) This regulation does not apply if a person under a contract described in subregulation (1) has provided the information referred to in regulation 12(2)(a) to (2)(f) to a local government or group of local governments under a contractual requirement.
- (3) Subject to subregulation (2), a person under a contract described in subregulation (1) must, within 2 months after the end of each financial year in which the system operates, give the CEO the information referred to in regulation 12(2)(a) to (2)(f).

Penalty: a fine of \$5 000.

Environmental Protection (NEPM-UPM) Regulations 2013

Appeals

Part 4**r. 14**

Part 4 — Appeals**14. Appeals**

- (1) A brand owner aggrieved by —
 - (a) the rejection of an action plan under regulation 7(1)(c);
or
 - (b) a decision of the CEO under regulation 8(1),
may, within 21 days after the day on which the person is given notice of the rejection or decision, lodge with the Minister an appeal in writing setting out the grounds of the appeal.
- (2) An appeal lodged under subregulation (1) is to be treated as if it were an appeal under the Act section 102 and, for that purpose, the Act sections 102, 106, 107 and 110 apply as if the appeal were an appeal under section 102.

Environmental Protection (NEPM-UPM) Regulations 2013**Part 5** Effect of review of measure**r. 15**

Part 5 — Effect of review of measure**15. Revocation, variance or replacement of measure**

These regulations cease to have effect if the NEPM cited as the *National Environment Protection (Used Packaging Materials) Measure 2011* —

- (a) is revoked or varied by the National Environmental Protection Council under the *National Environmental Protection Council (Western Australia) Act 1990* section 20(1); or
- (b) is replaced by a national environmental protection measure made by the National Environmental Protection Council under the *National Environmental Protection Council (Western Australia) Act 1990* section 14(1).

By Command of the Governor,

R. KENNEDY, Clerk of the Executive Council.