

— PART 1 —

ENVIRONMENTAL PROTECTION

EP301*

Environmental Protection Act 1986

Environmental Protection Amendment Regulations 2000

Made by the Administrator in Executive Council on the recommendation of the Environmental Protection Authority.

1. Citation

These regulations may be cited as the *Environmental Protection Amendment Regulations 2000*.

2. The regulations amended

The amendments in these regulations are to the *Environmental Protection Regulations 1987**.

[* Reprinted as at 2 April 1999.

For amendments to 2 June 2000 see 1999 Index to Legislation of Western Australia, Table 4, p. 70.]

[* Reprinted as at 2 April 1999.]

3. Part 8 inserted

After regulation 16 the following Part is inserted —

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Part 8 — Monitoring sulphur dioxide levels in the Goldfields residential areas

17. Interpretation

In this Part, unless the contrary intention appears —

“**approved monitoring equipment**” means monitoring equipment that has been approved by the Chief Executive Officer under regulation 20F;

“**significant industrial source**” has the same definition as it has in clause 8(2) of the Policy;

“**specified monitoring programme**” means a monitoring programme specified by the Chief Executive Officer in a works approval or licence;

“**the Policy**” means the *Environmental Protection (Goldfields Residential Areas) (Sulphur Dioxide) Policy 1992* approved under the *Environmental Protection (Goldfields Residential Areas) (Sulphur Dioxide) Policy Approval Order 1992* and set out in the Schedule to that Order,

and unless the contrary intention appears, other words and expressions have the same respective definitions as they have in the Policy.

18. Prescribed licence conditions for certain industrial premises

There is prescribed for the purposes of section 62(1)(h) of the Act as a condition of a works approval or licence in relation to any premises on which there is a significant industrial source the following conditions —

- (a) that monitoring equipment used for the purposes of a works approval or licence or a specified monitoring programme is to be approved monitoring equipment;
- (b) any measurement taken for the purpose of the works approval or licence or a specified monitoring programme is to be taken with approved monitoring equipment.

19. Approved monitoring equipment to be used in specified monitoring programme

A person who —

- (a) is required by a works approval or licence to carry out a specified monitoring programme with approved monitoring equipment; and
- (b) does not use approved monitoring equipment for the purpose of carrying out that monitoring programme,

commits an offence.

Penalty: \$5 000.

20. Duty to ensure that approved monitoring equipment is accurate

(1) A person who —

- (a) is required by a works approval or licence to carry out a specified monitoring programme with approved monitoring equipment; and

- (b) does not ensure that any approved monitoring equipment used in that monitoring programme is operating so as to give measurements that are accurate,

commits an offence.

Penalty: \$5 000.

- (2) It is a defence to proceedings for an offence under subregulation (1) if the person charged with that offence proves that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

20A. Duty to comply with conditions of approval of monitoring equipment

- (1) A person who —
 - (a) is required by a works approval or licence to carry out a specified monitoring programme with approved monitoring equipment; and
 - (b) does not comply with a condition imposed under regulation 20G,

commits an offence.

Penalty: \$5 000.

- (2) It is a defence to proceedings for an offence under subregulation (1) if the person charged with that offence proves that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

20B. Report on results of specified monitoring programme

- (1) The Chief Executive Officer may by notice require a person required by a works approval or licence to carry out a specified monitoring programme to report to the Chief Executive Officer on the matters referred to in subregulation (2) at periods or on dates specified in the notice.
- (2) The report under subregulation (1) is to —
 - (a) contain details of the measurements taken using approved monitoring equipment or other equipment in the course of a specified monitoring programme;
 - (b) state whether or not any inaccuracy in those measurements is known to the person making the report;
 - (c) if an inaccuracy in those measurements is known —
 - (i) state the extent of the inaccuracy known to the person making the report;

- (ii) state any cause of the inaccuracy known to the person making the report.
- (3) A person given notice under subregulation (1) is to comply with the requirements in that notice.
Penalty: \$5 000.

20C. Presumption of accuracy of measurements

A measurement taken by approved monitoring equipment is to be taken to be correct in the absence of proof, on the balance of probability, to the contrary.

20D. Presumption of accuracy of contents of report

A statement in a report as to the results of a specified monitoring programme made under section 62(3) of the Act or regulation 20B detailing the measurements that were taken using approved monitoring equipment is to be taken to be evidence that those measurements were taken by the monitoring equipment in the absence of proof, on the balance of probability, to the contrary.

20E. Notification of inaccurate measurement

A person who has submitted a report under regulation 20B who becomes aware that a measurement referred to in the report is inaccurate must, as soon as practicable after discovering the inaccuracy, report to the Chief Executive Officer the extent, and cause, of the inaccuracy which is known to the person making the report.

Penalty: \$5 000.

20F. Approval of monitoring equipment

- (1) A person may apply to the Chief Executive Officer for monitoring equipment to be used in a specified monitoring programme to monitor —
 - (a) sulphur dioxide levels in the atmosphere; or
 - (b) meteorological data,to be approved.
- (2) An application for approval of monitoring equipment is to be in a form approved by the Chief Executive Officer unless the Chief Executive Officer approves an application being made by telephone or other electronic means.
- (3) If a person applies to the Chief Executive Officer for monitoring equipment to be approved, the Chief Executive Officer may —
 - (a) require the applicant to provide more information before deciding whether or not to grant the approval;

- (b) refuse to grant the approval; or
 - (c) grant the approval.
- (4) Within 60 days of the making of the application the Chief Executive Officer is to —
- (i) determine the application; and
 - (ii) if the application is refused, provide the person who applied for the approval with a statement of the reasons for refusing the application;
 - (iii) if the application is granted, issue a certificate of approval to the applicant.
- (5) A certificate of the Chief Executive Officer stating that monitoring equipment is or is not approved monitoring equipment is conclusive proof of that fact.

20G. Conditions of approval of monitoring equipment

If monitoring equipment is approved under regulation 20F, that approval is subject to the following conditions —

- (a) the equipment is to be calibrated in accordance with any of the following standards as the Chief Executive Officer may specify in writing —
 - (i) the standards specified by the manufacturer of the equipment;
 - (ii) an Australian standard;
 - (iii) an international standard; and
- (b) the equipment is to be operated in accordance with such quality assurance programme as the Chief Executive Officer may specify in writing.

20H. Revocation of approval

- (1) The Chief Executive Officer may revoke an approval under regulation 20F if, in the Chief Executive Officer's opinion —
- (a) the equipment referred to in the certificate of approval is not considered to be suitable to be used in a specified monitoring programme;
 - (b) the equipment referred to in the certificate of approval has not provided accurate measurements; or
 - (c) a person has, in relation to an application under regulation 20F(1), provided information in written or oral form that the person knew, or could reasonably be expected to have known, to be —
 - (i) false or misleading in a material particular; or

- (ii) likely to deceive in a material way.
- (2) The Chief Executive Officer may revoke an approval of approved monitoring equipment if —
 - (a) that equipment has not been calibrated or operated in accordance with a condition imposed under regulation 20G; and
 - (b) in the opinion of the Chief Executive Officer, that failure to comply with the condition could have materially affected the accuracy of the equipment or the reliability of the results obtained from that equipment.
 - (3) A revocation of an approval under regulation 20F is not effective unless the Chief Executive Officer has caused written notice of the intention to revoke the approval to be served personally or by post on the person who obtained the approval stating the grounds on which the revocation is to be made and has allowed the person 21 days to provide reasons as to why the Chief Executive Officer should not revoke the approval.
 - (4) The Chief Executive Officer must set out in the written notice referred to in subregulation (3) the reasons for the revocation of the approval.

20I. Appeal

- (1) A person who is aggrieved by a decision of the Chief Executive Officer under regulation 20F, 20G, or 20H may within 21 days after the day on which the person is notified of the 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 section 102 of the Act, and for that purpose sections 106 to 110 of the Act apply as if the appeal were an appeal under section 102.

20J. Approval of monitoring equipment pending determination of appeal

- (1) If —
 - (a) an appeal has been lodged under regulation 20I(1) in relation to an approval revoked under regulation 20H; and
 - (b) the Chief Executive Officer has entered into an agreement in writing with the licensee as to the interim monitoring measures to be adopted by the licensee pending the determination of the appeal,

until 60 days after the determination of the appeal, or such other time as is agreed in writing by the Chief Executive Officer and the licensee, any monitoring

equipment used in accordance with that agreement is to be taken to be approved monitoring equipment.

- (2) A certificate issued by the Chief Executive Officer stating that monitoring equipment specified in the certificate has or has not been used in accordance with an agreement referred to in subregulation (1)(b) is, in the absence of proof on the balance of probability to the contrary, evidence of that fact.
- (3) In this regulation, a reference to the licensee is a reference to a person who is required by a works approval or a licence to carry out a specified monitoring programme with approved monitoring equipment.

20K. Judicial notice of signature of the Chief Executive Officer

Judicial notice is to be taken of the signature of the Chief Executive Officer on a certificate purporting to be issued under regulation 20F(5) or 20J(2).

20L. Review of this Part

- (1) The Authority is to report to the Minister on the operation and effectiveness of this Part within 24 months after its commencement.
- (2) The report is to be made after —
 - (a) the public has been given an opportunity to make submissions on the operation and effectiveness of the Part; and
 - (b) a reasonable endeavour has been made to obtain the views of public authorities and persons that appear to the Authority to be significantly affected by the Part.
- (3) As soon as is practicable after the preparation of the report the Minister is to cause it to be laid before each House of Parliament.

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Recommended by the Environmental Protection Authority.

B. BOWEN, Chairman.

By Command of the Administrator,

ROD SPENCER, Clerk of the Executive Council.