
ENVIRONMENTAL PROTECTION

EP301*

ENVIRONMENTAL PROTECTION ACT 1986
ENVIRONMENTAL PROTECTION (LANDFILL) LEVY ACT 1998
INTERPRETATION ACT 1984
**ENVIRONMENTAL PROTECTION AMENDMENT
REGULATIONS (No. 2) 1998**

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

Citation

1. These regulations may be cited as the *Environmental Protection Amendment Regulations (No. 2) 1998*.

Commencement

2. These regulations come into operation on the day on which the *Environmental Protection (Landfill) Levy Act 1998* comes into operation.

Part 9 inserted

3. After regulation 20 of the *Environmental Protection Regulations 1987** the following Part is inserted —

“

PART 9 — LANDFILL LEVY

Interpretation

21. (1) In this Part —

“**approved**” means approved in writing by the Chief Executive Officer;

“**commencement day**” means the day on which the *Environmental Protection (Landfill) Levy Act 1998* comes into operation;

“**exemption period**” means the period of exemption specified in a notice of exemption under regulation 23 (4);

“**existing licensee**” means a person who is a licensee on commencement day;

“**Fund**” means the Waste Management and Recycling Fund established under section 110H of the Act;

“**landfill cover**” means matter that —

- (a) is received at a category 64 or category 65 licensed landfill;
- (b) in accordance with a condition of the licence in respect of the licensed landfill, is used or is to be used for the purpose of covering waste;
- (c) is weighed over a weighbridge at the licensed premises at the time it is received; and
- (d) is accepted by the licensee at no charge or is paid for by the licensee;

“levy” means a levy imposed under the *Environmental Protection (Landfill) Levy Act 1998*;

“licensed landfill” means premises specified in category 63, 64 or 65 of Schedule 1;

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

“metropolitan region” has the same meaning as it has in the *Metropolitan Region Town Planning Scheme Act 1959*;

“return period” means —

(a) in the case of an existing licensee, the following periods —

- Period 1: July 1 - September 30;
- Period 2: October 1 - December 31;
- Period 3: January 1 - March 31;
- Period 4: April 1 - June 30;

(b) in the case of a licensee who is granted a licence after commencement day, the following periods —

- Period 1: the period beginning on the date of the grant of the licence and ending on the September 30, December 31, March 31 or June 30 immediately next following;
- Each 3 month period next following Period 1.

(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 Schedule 1.

Application

22. Subject to any exemption granted on application under regulation 23 (1), this Part applies to —

- (a) all waste received at licensed landfills in the metropolitan region; and
- (b) all waste collected within the metropolitan region and received at licensed landfills outside the metropolitan area.

Exemptions

23. (1) A licensee may by application in the approved form claim an exemption from regulation 22 for the following waste received at a licensed landfill in any return period —

- (a) landfill cover;
- (b) waste that is not disposed of to landfill but is collected and stored at a licensed landfill for recycling;
- (c) approved waste that has been disposed of in an approved manner.

(2) A licensee may by application in the approved form claim an exemption from the requirement under regulation 25 (1) to weigh waste on a weighbridge.

(3) The Chief Executive Officer may, by written notice —

- (a) grant, or refuse to grant, an exemption;
- (b) grant an exemption subject to conditions, or limited to circumstances, specified in the notice; or
- (c) revoke an exemption.

(4) In any exemption notice for waste referred to in subregulation (1) (b) or (c) the Chief Executive Officer is to specify the period for which the exemption applies.

(5) If a condition subject to which an exemption is given is breached, the exemption ceases to have effect.

(6) If waste referred to in subregulation (1) (b) for which an exemption is granted has not been recycled, or otherwise removed in an approved manner, from the licensed landfill within the exemption period, the licensee is to pay the levy that would have been payable in respect of that waste if the exemption had not been granted not later than 2 weeks after the end of the exemption period.

(7) If the Chief Executive Officer is satisfied that —

- (a) waste referred to in subregulation (1) (b) for which an exemption is granted has been recycled or otherwise removed from the licensed landfill within 12 months after the exemption period; and
- (b) the levy has been paid in respect of the waste,

the Chief Executive Officer may refund or rebate to the licensee an amount equal to the amount of levy paid in respect of the waste.

Financial assurance — exempt waste

24. (1) In this regulation —

“licensee” does not include a licensee who is a local government.

(2) If a licensee is granted an exemption for waste referred to in regulation 23 (1) (b), the Chief Executive Officer may require the licensee to provide a financial

assurance to the Chief Executive Officer of an amount specified by the Chief Executive Officer that does not exceed the amount of levy that would otherwise be payable in respect of the waste.

(3) The licensee is to provide the financial assurance —

- (a) not later than 2 weeks after the licensee is notified by the Chief Executive Officer that the financial assurance is required; and
- (b) in an approved form,

and is to maintain the financial assurance in accordance with any requirements of the Chief Executive Officer.

(4) If the financial assurance is not provided and maintained in accordance with subregulation (3) —

- (a) the exemption ceases to have effect; and
- (b) the amount of levy that would have been payable in respect of the waste if the exemption had not been granted becomes due and payable.

(5) The Chief Executive Officer may call on or use the financial assurance and pay the moneys into the Fund if —

- (a) the waste in respect of which the financial assurance is paid has not been recycled, or otherwise removed from the licensed landfill in an approved manner, within the exemption period; and
- (b) the levy in respect of the waste is not paid as required under regulation 23 (6).

(6) If —

- (a) waste referred to in regulation 23 (1) (b) for which an exemption is granted is recycled or otherwise removed from the licensed landfill within the exemption period; or
- (b) the levy is paid in respect of the waste,

the financial assurance in respect of the waste may be terminated by the licensee.

Amount of levy — when waste received at licensed landfill with weighbridge

25. (1) Subject to any exemption granted on application under regulation 23 (2), waste to which this Part applies that is received at a licensed landfill with a weighbridge is to be weighed on the weighbridge at the time of delivery and the weight of the waste as shown at the weighbridge is to be the weight that is used for the purpose of determining the amount of the levy under regulation 27.

(2) A licensee who has been granted an exemption from the requirement to weigh waste received is to estimate the weight of that waste in the approved manner, and the estimated weight is to be the weight that is used for the purpose of determining the amount of the levy under regulation 27.

Amount of levy — when waste received at licensed landfill without weighbridge

26. (1) If the licensed landfill at which waste to which this Part applies is received does not have a weighbridge, the Chief Executive Officer, having regard to —

- (a) the capacity of the licensed landfill, as specified on the licence;
- (b) the characteristics and density of waste received at the licensed landfill; and
- (c) any survey report made in respect of the licensed landfill,

from time to time is to estimate the weight of waste received and give the licensee written notice of the estimate.

(2) The estimated weight notified to the licensee is to be the weight that is used for the purpose of determining the amount of the levy under regulation 27.

(3) If, after receiving a survey report under subregulation (5), the Chief Executive Officer is of the opinion that the amount of waste received by a licensee during a return period was less than the amount estimated under subregulation (1), the Chief Executive Officer may refund or rebate to the licensee an amount equal to the amount of levy paid in respect of the amount of waste that exceeds the estimated amount.

(4) The Chief Executive Officer may by written notice direct a licensee of a licensed landfill in respect of which an estimate of weight of waste for the purposes of subregulation (1) has been made to cause —

- (a) a survey of the volume of waste received at the licensed landfill in the survey period specified by the Chief Executive Officer to be carried out by an approved person; and
- (b) a report to be prepared on the survey by the person who carried out the survey.

(5) The licensee is to give the report of the survey to the Chief Executive Officer within the time specified by the Chief Executive Officer and in a form approved by the Chief Executive Officer.

Penalty: \$200.

Determination of amount of levy

27. The amount by way of levy that is payable in respect of waste to which this Part applies is —

- (a) \$1 per tonne for waste (other than waste specified in paragraph (b)) received at a category 63 licensed landfill;
- (b) \$3 per tonne for low hazard waste (type 1) received at a category 63 licensed landfill with the approval of the Chief Executive Officer; and
- (c) \$3 per tonne for waste received at a category 64 or 65 licensed landfill.

Financial assurance — private licensee

28. (1) In this regulation —

“licensee” does not include a licensee who is a local government,

(2) Each licensee is to pay to the Chief Executive Officer, in accordance with subsection (3), a financial assurance that —

- (a) is in an approved form; and
- (b) secures or guarantees payment of an amount determined by the Chief Executive Officer, being an amount that in the opinion of the Chief Executive Officer is equivalent to the average levy to be paid by the licensee in a return period.

Penalty: \$200.

(3) The financial assurance is to be paid to the Chief Executive Officer —

- (a) in the case of an existing licensee, not later than 2 weeks after commencement day; and
- (b) in the case of a licensee who is granted a licence after commencement day, not later than 2 weeks after the licence is granted.

(4) The licensee is to maintain the financial assurance in accordance with any requirements of the Chief Executive Officer.

Penalty: \$200.

(5) The moneys from any financial assurance that is called on or used by the Chief Executive Officer are to be paid into the Fund.

(6) The Chief Executive Officer is to review the amount of a financial assurance provided under this regulation not later than 2 years after it is provided and thereafter not later than 2 years after each review.

(7) The Chief Executive Officer may at any time, by written direction, require a licensee to increase the amount of the financial assurance provided by the licensee if the Chief Executive Officer thinks it is appropriate to do so.

(8) A licensee is to comply with a direction given to the licensee under subregulation (7).

Penalty: \$200.

Records

29. (1) Upon receiving waste at a licensed landfill, the licensee is to make a record in accordance with this regulation.

(2) The record is to be in an approved form and is to show —

- (a) the time and date of the delivery;
- (b) the name and licence number of the licensee;
- (c) the weight, or, if the waste is not weighed, the estimated weight, of the waste;
- (d) a description of the type of waste;
- (e) the amount of levy payable in respect of the waste; and
- (f) any other particulars the Chief Executive Officer may, by written notice to the licensee, require the licensee to include.

(3) Any record made by a licensee under this regulation is to be kept by the licensee 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 is to make the records available to an authorized person within 24 hours of being requested by the authorized person to do so.

(5) A licensee who —

- (a) contravenes subregulation (1) or (4); or

- (b) makes a record under this regulation which is false in any material particular,
commits an offence.
Penalty: \$200.

Return and payment of levy

- 30.** (1) The levy is payable not later than 14 days after the end of each return period.
- (2) A licensee, from the details entered in the records referred to in regulation 29 and any estimate made under regulation 25 or 26, is to —
- (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 Chief Executive Officer.
- (3) The return is to be accompanied by a remittance for the amount of the levy payable on the waste to which that return relates.

Audit

- 31.** (1) The Chief Executive Officer may at any time, by notice in writing, direct a licensee to cause —
- (a) an audit of —
 - (i) the amount of waste received at the licensed landfill within the specified period; and
 - (ii) the amount of levy payable in respect of that waste, to be carried out by a person from the specified class of persons; and
 - (b) a report to be prepared on the audit by the person who carried out the audit.
- (2) The licensee is to provide the copy of the report of the audit, certified as correct by the person who carried out the audit, to the Chief Executive Officer within the specified period.
- Penalty: \$200.
- (3) In this regulation —
“specified” means specified in the notice.

Review and appeal

- 32.** (1) If the Chief Executive Officer —
- (a) refuses to grant an exemption, or imposes conditions or limitations upon the grant of an exemption, under regulation 23;
 - (b) requires the provision of a financial assurance under regulation 24; or
 - (c) gives a direction under regulation 31,
- the applicant may, within 14 days of notice of the decision, apply to the Chief Executive Officer for a review of the decision.
- (2) When a request is made under subregulation (1), the Chief Executive Officer is to review the decision and make a fresh decision.
- (3) If the applicant is dissatisfied with a decision under subregulation (2), the applicant may, within 14 days of notice of the decision, institute an appeal against the decision to the Minister.
- (4) An appeal is instituted by giving notice in writing of the appeal, setting out the grounds and facts on which the appellant is relies.
- (5) The Minister may affirm or vary the decision, or set aside the decision and substitute another decision, as the Minister thinks fit and the decision of the Minister is final.
- (6) The making of an application for review or the institution of an appeal in respect of a decision under regulation 23 or 24 does not operate to stay the decision.

Payment of levy as condition of licence (s.62 (1) (h))

- 33.** It is a condition of a licence in respect of a licensed landfill that the licensee is to pay 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.

[* Reprinted as at 4 December 1995.

For amendments to 17 December 1997 see 1996 Index to Legislation of Western Australia, Table 4, pp.72-3, and Gazette 12 September 1997.]

Recommended by the Environmental Protection Authority.

BERNARD BOWEN, Chairman.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.