



New South Wales

Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

Minister for Energy and Environment

Explanatory note

The object of this Regulation is to amend the *Protection of the Environment Operations (General) Regulation 2021* to make provision for—

- (a) a prohibition on—
 - (i) the thermal treatment of waste that involves or results in energy recovery, and
 - (ii) work carried out to enable that activity to be carried out, and
- (b) the exceptions to the prohibition, including where—
 - (i) the activity or work is carried out at certain precincts, former mine sites and former thermal electricity generation sites, or
 - (ii) the activity is carried out to replace a less environmentally sound fuel, provided—
 - (A) the fuel was thermally treated, or lawfully able to be thermally treated, immediately before the prohibition comes into force, and
 - (B) the energy recovered is mostly used to power on-site industrial or manufacturing processes, or
 - (iii) the activity is an established and operating activity at the premises immediately before the prohibition comes into force.

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1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

DRAFT

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 2021

[1] Clause 113A

Insert after clause 113—

113A Energy recovery from thermal treatment of waste

The EPA is declared, under the Act, section 6(3), to be the appropriate regulatory authority for a matter arising under Part 3A.

[2] Chapter 8, Part 3A

Insert after Part 3—

Part 3A Energy recovery from thermal treatment of waste

128A Definitions

In this Part—

Activation Precinct has the same meaning as in the *State Environmental Planning Policy (Activation Precincts) 2020*.

commencement day means the day on which this Part commences.

derelict mine site has the same meaning as in the *Mining Act 1992*.

eligible waste fuel means a fuel listed in Part 3 of the *NSW Energy from Waste Policy Statement* and defined in Part 1 of the *Eligible Waste Fuels Guidelines*, each published in the Gazette by the EPA and as in force from time to time.

energy recovery means the recovery of energy, either as heat or as a fuel.

former mine site means a mine site other than a derelict mine site.

less environmentally sound fuel means coal or coal-derived solid fuel or petroleum-based liquid fuel, but does not include the following—

- (a) liquefied petroleum gas,
- (b) natural gas,
- (c) liquefied natural gas.

Parkes Activation Precinct means the Activation Precinct declared by the *State Environmental Planning Policy (Activation Precincts) 2020*, Schedule 1, clause 1.

thermal treatment means the processing of waste by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or another thermal treatment process, but does not include the following—

- (a) autoclaving processes,
- (b) biological processes, including anaerobic digestion and composting,
- (c) thermal processes where there is no change in the chemical composition of the waste,
- (d) the incineration of waste for destruction or disposal,
- (e) the thermal treatment of biosolids,
- (f) the thermal treatment of contaminated soil,
- (g) the thermal treatment of scrap metal,
- (h) the use of waste-derived fuel by a vehicle,

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- (i) the thermal treatment of waste plastic to produce plastic products, or inputs for plastic products, where at least 75% of the weight of the waste plastic thermally treated in a 12-month period is converted into plastic products or inputs for plastic products.

vehicle includes the following—

- (a) an aircraft,
- (b) a train within the meaning of the *Rail Safety National Law (NSW)*, but including a vehicle designed to operate both on and off a railway when the vehicle is not operating on a railway,
- (c) a vehicle within the meaning of the *Road Transport Act 2013*,
- (d) a vessel within the meaning of the *Marine Safety Act 1998*.

waste has the same meaning as in the Act, but does not include an eligible waste fuel.

128B Prohibition on energy recovery from thermal treatment of waste

- (1) A person must not carry out, or cause or allow to be carried out, the thermal treatment of waste if—
 - (a) it involves or results in energy recovery from the waste, and
 - (b) 1 or more of the activities carried out at the premises are scheduled activities that require a licence.
- (2) A person must not carry out, or cause or allow to be carried out, work at a premises that purports to enable the activity prohibited by subsection (1) to be carried out at the premises.
- (3) An offence under this clause is a strict liability offence.
Maximum penalty—
 - (a) for a corporation—400 penalty units and, in the case of a continuing offence, a further 400 penalty units for each day the offence continues, or
 - (b) for an individual—200 penalty units and, in the case of a continuing offence, a further 200 penalty units for each day the offence continues.

128C Exceptions to prohibition on energy recovery from thermal treatment of waste

- (1) A person is not guilty of an offence under clause 128B if the activity or work prohibited by the clause is carried out at—
 - (a) the Parkes Activation Precinct, or
 - (b) 1 of the following nominated precincts, identified on a map published in the Gazette by the EPA—
 - (i) the Richmond Valley Regional Jobs Precinct,
 - (ii) the Southern Goulburn Mulwaree Precinct,
 - (iii) the West Lithgow Precinct, or
 - (c) 1 of the following nominated precincts or sites, identified on a map or specified in a notice published in the Gazette by the EPA—
 - (i) an Activation Precinct,
 - (ii) a Regional Jobs Precinct,
 - (iii) a former mine site,
 - (iv) a former thermal electricity generation site.

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- (2) The EPA may, by notice published in the Gazette, vary or revoke a nomination referred to in subclause (1)(b) or (c).
- (3) A person is not guilty of an offence under clause 128B if the activity prohibited by the clause—
- (a) is carried out to replace a less environmentally sound fuel, where—
 - (i) the less environmentally sound fuel was thermally treated, or was lawfully able to be thermally treated, immediately before the commencement day, and
 - (ii) the energy recovered from thermally treating the less environmentally sound fuel, including any energy generated from the energy, is mostly used to power industrial or manufacturing processes on site, or
 - (b) is both of the following—
 - (i) lawfully able to be carried out and first carried out before the commencement day,
 - (ii) an established and operating activity at the premises immediately before the commencement day.
- (4) In this clause—
mostly used, in relation to powering industrial or manufacturing processes on site, means at least 90% of the energy generated on site in a 12-month period is used on site.

128D Effect of prohibition on environment protection licences

The EPA must refuse an application for the issue, transfer or variation of a licence if granting the application would purport to authorise an activity or work prohibited by this Part.

Note— Under the *Environmental Planning and Assessment Act 1979*, section 4.42, a licence cannot be refused if it is necessary for carrying out State significant development authorised by a development consent.

[3] Schedule 6 Penalty notice offences

Insert after the matter relating to the *Protection of the Environment Operations (General) Regulation 2021*, clause 137(2) in the table to the Schedule—

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|----------------|---|---------|----------|
| Clause 128B(1) | 3 | \$5,500 | \$11,000 |
| Clause 128B(2) | 3 | \$5,500 | \$11,000 |