

Protection of the Environment Operations (General) Regulation 1998

Chapter 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Regulation 1998*.

2 Commencement

This Regulation commences on.

3 Definitions

In this Regulation:

the Act means the Protection of the Environment Operations Act 1997.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Chapter 2 Provisions relating to licensing

5 Commencement of licensing requirement for activities not previously required to be licensed: s. 52 (1)

The prescribed period for the purposes of section 52 (1) (a) of the Act is 9 months.

Note. Section 52 (1) of the Act postpones the need for a licence that is required by the enactment or amendment or replacement of Schedule 1 to the Act (Schedule of EPA-licensed activities) in order for a person to continue to carry out any work or activity. The need for the licence is postponed until the end of the prescribed period after the requirement for a licence arises or until a licence application is determined, whichever is the later.

6 Exclusion of Part 5 of EPA: s. 52 (2)

The EPA is not a determining authority within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of an approval (within the meaning of that Part) that consists of the issue of an environment protection licence referred to in section 52 (1) of the *Protection of the Environment Operations Act 1997* so long as the licence authorises only the same or substantially the same work or activity, and level of work or activity, as was being carried out before the issue of the licence.

7 Matters to be set out in statement of reasons for grant or refusal of licence applications: s. 61 (2) (b)

- (1) A statement provided by a regulatory authority under section 61 of the Act of the reasons for the grant or refusal of a licence application must set out the following matters (in addition to any other matters the authority considers appropriate):
 - (a) the significant environmental or other issues that the authority took into account in making its decision on the licence application,
 - (b) any significant environmental outcomes, standards or requirements (if

relevant) that the authority considered applicable to the activity the subject of the application and that the authority took into account in making its decision on the application.

- (2) A statement of reasons may set out any of the above matters by reference to information set out in a document that is available to the person requesting the statement of reasons or that is otherwise publicly available.

Note. Section 61 requires a statement of reasons to be provided, on written request by any person, of the reasons for the grant or refusal of any licence application (namely, an application for the issue, transfer or variation of a licence.

8 Offence of providing false information

- (1) A person who, in or in connection with a licence application, provides any information, or makes any statement, that is false or misleading in a material particular is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation - 200 penalty units,
(b) in the case of an individual - 100 penalty units.
- (2) It is a defence to a prosecution for an offence against this section if the person establishes that the person had reasonable grounds to believe that information or statement was true and had no reason to suspect that the information or statement was false or misleading in a material respect.

Chapter 3 Provisions relating to water pollution

45 Prescribed matter for the definition of "water pollution" in Dictionary

The matter described in Schedule 2 is prescribed as matter for the purposes of paragraph (c) of the definition of **water pollution** in the Dictionary at the end of the Act.

Note. The definition of **water pollution** for the purposes of the Act includes the placing etc into waters of any matter of a nature, description or class prescribed by the regulations or of matter that does not comply with a standard prescribed by the regulations in respect of that matter.

46 Methodology for testing for matter in waters

- (1) This clause applies for the purpose of determining whether water pollution has occurred because of the presence or concentration of matter in any waters.
- (2) The methodology for testing for the presence or concentration in waters of matter specified in Column 1 of Schedule 3 is to be such methodology set out in *Standard Methods for the Examination of Water and Wastewater* as is specified in Column 2 of that Schedule in relation to that matter.
- (3) The particulars of any such methodology may be varied by the person conducting the test so long as the variation is not such as can affect the results of the test.
- (4) In this clause:

Standard Methods for the Examination of Water and Wastewater means the 19th edition of the document of that name, published in 1995 by the American Public Health Association, the American Water Works Association and the Water Environment Federation.

47 Exemption from water pollution offence for pollutants discharged from Victorian premises into River Murray

- (1) Section 120 of the Act does not apply to a person who, from premises in Victoria, pollutes or causes or permits the pollution of the waters of the River Murray.
- (2) Subclause (1) applies only in relation to conduct that is authorised by a licence in force under the *Environment Protection Act 1970* of Victoria.
- (3) The EPA may, by order in writing served on any such person, declare that the exemption arising under this clause no longer applies to the person in respect of pollution from those premises.
- (4) While such an order is in force, the exemption arising under this clause no longer applies to the person in respect of pollution from those premises.

48 Exemption from water pollution offence for pollutants discharged into sewer

- (1) Section 120 of the Act does not apply to the discharge of pollutants into a sewer.
- (2) The exemption arising under this clause does not apply:
 - (a) in the case of a sewer that is within the area of operations of a sewage authority, unless the discharge of the pollutants into the sewer has the approval of that authority, or
 - (b) in any other case, unless the discharge of the pollutants into the sewer has the lawful approval of the person having the ownership or control of the sewer.

(3) In this clause, *sewage authority* means:

- (a) the Sydney Water Corporation Limited or the Hunter Water Corporation Limited, or
- (b) a water supply authority constituted under the *Water Supply Authorities Act 1987*, being an authority exercising sewerage functions under that Act, or
- (c) a council or county council exercising sewerage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

49 Exemption from water pollution offence for pollutants arising from operation of engines propelling vessels

- (1) Section 120 of the Act does not apply to the operation of an engine propelling a vessel.
- (2) The exemption arising under this clause does not apply in the following circumstances:
 - (a) if the engine is deliberately operated to dredge sediments,
 - (b) if the engine has been modified to discharge bilge water as it operates,
 - (c) if the engine has not been properly maintained so as to minimise pollution.

Chapter 4 Other general provisions

Part 1 Police entry powers regarding noise

50 Warrants relating to noise abatement directions

- (1) For the purposes of section 280 (5) of the Act, the prescribed form of record to be made by a Magistrate when a warrant is granted is Form 1 in Schedule 2.
- (2) For the purposes of section 280 (10) of the Act, the prescribed form of record to be made by a police officer when a warrant is granted is Form 2 in Schedule 2.
- (3) For the purposes of section 280 (11) (a) of the Act, the prescribed statement to be furnished to a resident of premises entered pursuant to a warrant is Form 3 in Schedule 2.

Part 2 Appeals

51 Appeals regarding noise: s. 290

For the purposes of section 290 of the Act, the period within which a person may appeal to the Land and Environment Court against a noise control notice relating to the keeping of an animal at premises is 7 days (instead of 21 days) after service of the notice.

Part 3 Fees relating to environment protection notices

52 Administrative fee for administrative costs of preparing and giving clean-up notice: s. 94 (2)

The fee payable under section 94 (2) of the Act to a regulatory authority by a person who is given a clean-up notice by that authority is \$320.

Note. Section 94 of the Act provides that the fee is payable within 30 days. Application may be

made under that section to the authority for an extension of time to pay the fee or for the waiving of payment of the fee. A failure to pay the fee within the requisite time constitutes an offence.

53 Administrative fee for administrative costs of preparing and giving prevention notice: s. 100 (2)

The fee payable under section 100 (2) of the Act to a regulatory authority by a person who is given a prevention notice by that authority is \$320.

Note. Section 100 of the Act provides that the fee is payable within 30 days (subject to appeal proceedings). Application may be made under that section to the authority for an extension of time to pay the fee or for the waiving of payment of the fee. A failure to pay the fee within the requisite time constitutes an offence.

Part 4 Financial assurances

54 Additional restriction on requiring financial assurances: s. 299 (d)

The following matter is prescribed for the purposes of section 299 (d) of the Act: The adequacy of financial assurances (if any) already provided, or required to be provided, by the same person to a public authority to secure or guarantee funding for or towards the carrying out of the same or substantially the same works or programs for which a financial assurance is contemplated under the Act.

Note. Section 299 of the Act prevents a regulatory authority from imposing a condition on a licence requiring a financial assurance to be provided unless it is satisfied that the condition is justified having regard to a number of specified matters. The above clause specifies additional matters to which the authority must have regard for that purpose.

Schedule 2 Prescribed matter for the definition of water pollution

(Clause 9)

- 1 Any animal matter of any description, including carcasses of animals, parts or remains of animals, offal, flesh and bones.
- 2 Any plant matter of any description, including vegetable or fruit wastes, leaves, grass, trees, wood, dust, sawdust, shavings, chips, bark or other forest products or refuse.
- 3 Any inorganic matter of any description, including:
 - (a) ashes, ballast, soil, earth, mud, stones, sand, clay residue, and
 - (b) washings from any mineral processing or extractive operation or spoil, and
 - (c) washings from any dredging operation.
- 4 Any night soil, excreta, manure, septic tank waste or urine.
- 5 Any matter of an infectious nature.
- 6 Any scrap metal, glass, junk, paper, plastic, rubbish, vehicle or vehicle tyre, any industrial waste and any refuse of any other description.
- 7 Any oil or inflammable liquid of any description.
- 8 Any chemical or poisonous substance of any description.
- 9 Any thermal waste (being any liquid which, after being used in or in connection with any manufacturing, trade or domestic process, is more than 2 degrees Celsius hotter than the water into which it is discharged).
- 10 Any waste that causes biochemical oxygen demand.
- 11 Any waste that cause chemical oxygen demand.
- 12 Any waste that contains suspended or dissolved solids.
- 13 Any waste that contains any gases other than oxygen.
- 14 Any waste that contains any nitrogen or phosphorus compound.
- 15 Any waste that contains methylene blue active substances.
- 16 Any waste that contains any radioactive substance.
- 17 Any waste that contains faecal coliforms or faecal streptococci.
- 18 Any waste that contains a pesticide (within the meaning of the *Pesticides Act 1978*).
- 19 Any waste that has a pH value of less than 6.5 or more than 8.5.
- 20 Any waste that contains oil, grease or floating solids.
- 21 Any waste that contains any of the following substances: ammonia, arsenic, barium, boron, cadmium, chloride, chromium (hexavalent), copper, cyanide, fluoride, iron (filtrable), lead, manganese (filtrable), mercury, nitrate, nitrite, phenolic compounds, selenium, silver, sulfate, uranyl ion or zinc.

Schedule 3 Methodology for testing for matter

(Clause x)

A reference in this Schedule to a section designated by a number, or by a number and a letter, is a reference to the section designated by that permanent number, or by that permanent number and letter, in Standard Methods. A reference other than Standard Methods is indicated by citation referring to the references following the methods.

<i>Anionic Surfactants (as methylene blue active substances)</i>	Section 5540C.
<i>Arsenic</i>	Section 3113B, section 3114B, section 3120B, section 3500-As C or USEPA Method 200.8 (USEPA, 1991a).
<i>Barium</i>	Section 3111D, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Biochemical Oxygen Demand</i>	Section 5210B using either the azide modification of the iodometric method (section 4500-O C) or the membrane electrode method (section 4500-O G) for the determination of the dissolved oxygen.
<i>Boron</i>	Section 3120B, section 4500-B B or section 4500-B C.
<i>Cadmium</i>	Section 3111B, section 3111C, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Chemical Oxygen Demand</i>	Section 5220B, section 5220C or section 5220D.
<i>Chloride</i>	Section 4110B, section 4110C, section 4500-ClChlorideChloride-E, section 4500-Cl-E, section 4500-Cl-E, section 4500-Cl-D or section 4500-Cl-----F.
<i>Coliforms:</i> <i>(a) total coliforms</i> <i>(b) faecal coliforms</i>	Section 9221B or section 9222B. Section 9221E or section 9222D.
<i>Chromium (Hexavalent)</i>	Section 3500-Cr D or section 3500-Cr E, AS 2882-1986, USEPA Method 218.6 (USEPA, 1991a) or an approved IC method with colorimetric detection.
<i>Copper</i>	Section 3111B, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Cyanide (Total)</i>	Preliminary treatment 4500-CNCyanide (Total)Cyanide (Total)-B and/or distillation section 4500-CN-B and/or distillation section 4500-CN-B and/or distillation section 4500-CN-C followed by section 4500-CN---D, section 4500-CN-D, section 4500-CN-D, section 4500-CN-E or section 4500-CN-E or section 4500-CN-E or section 4500-CN-F, or an approved CFA method.
<i>Fluoride</i>	Section 4110B, section 4110C, section 4500-FFluorideFluoride-B, section 4500-F-B, section 4500-F-B, section

	4500-F-C or section 4500-F-C or section 4500-F-C or section 4500-F-D, 4500-F-D, 4500-F-D, 4500-F-E or section 4500-F-E or section 4500-F-E or section 4500-F-F.
<i>Iron (Filtrable)</i>	Section 3111B, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Lead</i>	Section 3111B, section 3111C, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Manganese (Filtrable)</i>	Section 3111B, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Mercury</i>	Section 3112B, USEPA Method 200.8 (USEPA, 1991a) or an approved automated Cold Vapour Method.
<i>Nitrogen (Ammonia)</i>	Preliminary distillation section 4500-NH3B followed by section 4500-NH3E, section 4500-NH3C, section 4500-NH3D, section 4500-NH3F or section 4500-NH3 G or an approved colorimetric CFA method.
<i>Nitrogen (Nitrate)</i>	Section 4110B, section 4110C, section 4500-NO3 C, section 4500-NO3 D, section 4500-NO3 E or section 4500-NO3 F or an approved colorimetric CFA method.
<i>Nitrogen (Nitrite)</i>	Section 4110B, section 4110C, section 4500-NO2 B, section 4500-NO2 C or section 4500-NO3 F (with cadmium column removed) or an appropriate colorimetric CFA method.
<i>Nitrogen (Organic)</i>	Section 4500-NorgB, section 4500-NorgC or Jirka modification (Jirka, 1976), section 4500-NorgD, or an approved digestion and colorimetric CFA method.
<i>Oil and grease</i>	Section 5520B, section 5520C or section 5520D, section 5520F, USEPA Method 1664 (USEPA, 1994) or an approved partition/gravimetric or infra-red method.
<i>Organic carbon (Total)</i>	Section 5310B, section 5310C or section 5310D.
<i>Oxygen Dissolved</i>	Section 4500-O C or section 4500-O G.
<i>Pentachlorophenol and its sodium salt</i>	Section 6410B, section 6420B or approved reverse phase HPLC method with electrochemical detection.
<i>Pesticides:</i>	
<i>(a) Organochlorine pesticides</i>	Section 6630B, section 6630C or section 6410B.
<i>(b) Organophosphorus pesticides</i>	USEPA Method 8141 (USEPA, 1986).
<i>(c) Carbamate pesticides</i>	Section 6610.
<i>(d) Chlorinated phenoxy acid herbicides</i>	Section 6640B or an approved reverse phase HPLC method with diode array detection.
<i>(e) Phenyl ureas, triazines, amides, and dipyridyls</i>	US NPS Method 4 (USEPA (EMSL)) or an approved reverse phase HPLC method with diode array detection.
<i>(f) Quaternary salts, Paraquat & Diquat.</i>	USEPA Method 549.1 (USEPA, 1992) or an approved reverse phase HPLC method with diode array detection.

<i>(g) Acrolein</i>	USEPA Method 603 (40 CFR, 1994) or other approved chromatographic procedure.
<i>pH value</i>	Section 4500-HpH valuepH value]B.
<i>Phenols and individual phenolic compounds</i>	Preliminary distillation section 5530B followed by section 5530C, section 5530D. For individual phenolic compounds section 6410B, section 6420B or approved reverse phase HPLC method with electrochemical detection.
<i>Phosphorus (Dissolved reactive)</i>	Section 4110B, section 4110C, section 4500-P C, section 4500-P D, section 4500-P E or section 4500-P F or an approved colorimetric CFA method.
<i>Phosphorus (Total)</i>	Persulfate digestion section 4500-P B.5 or Jirka modification (Jirka, 1976) followed by section 4500-P C, section 4500-P D, section 4500-P E or section 4500-P F or an approved digestion and colorimetric CFA method.
<i>Polychlorinated biphenyls</i>	Section 6630B, section 6630C or section 6410B.
<i>Radioactive Substances:</i>	
<i>(a) Gross alpha activity</i>	Section 7110B.
<i>(b) Gross beta activity</i>	Section 7110B.
<i>Selenium</i>	Section 3113B, section 3114B, section 3114C, section 3120B, section 3500-Se D or USEPA Method 200.8 (USEPA, 1991a).
<i>Silver</i>	Section 3111B, section 3113B, section 3120B or USEPA Method 200.8 (USEPA, 1991a).
<i>Substituted phenols and cresols</i>	Section 6410B, section 6420B or an approved reverse phase HPLC method with electrochemical detection.
<i>Sulfate</i>	Section 4110B, section 4110C, section 4500-SO4442- B, section 4500-SO4442-C, section 4500-SO4442-D, section 4500-SO4442- E or section 4500-SO4442-F.
<i>Temperature</i>	Section 2550B.
<i>Total dissolved solids dried at 180°C</i>	Section 2540C.
<i>Total suspended solids dried at 103-105°C</i>	Section 2540D, USEPA method 160.2 (USEPA, 1983) or AS 3550.4-1990.
<i>Uranyl ion</i>	To be determined by the method of D.A. Johnson and T.M. Florence as described in <i>Analytica Chimica Acta</i> , 1971, vol. 53, pp. 73–79.
<i>Zinc</i>	Section 3111B, section 3120B or USEPA Method 200.8 (USEPA, 1991a)

References

Jirka, A M *et al.* 1976. Ultra-micro semi-automated method for simultaneous determination of total phosphorus and total Kjeldahl nitrogen in wastewaters. *Environmental Science and Technology* 1976 10 (10): 1038.

Standards Association of Australia. 1986. AS 2882–1986: Waters—Determination of Chromium (VI) (Diphenylcarbazide spectrophotometric method). North Sydney,

NSW.

Standards Association of Australia. 1987. *AS 3506-1987: Waters*—Determination of filterable synthetic anionic surfactants—copper-ethylenediamine flame atomic absorption spectrometric method. North Sydney, NSW.

Standards Association of Australia. 1990. *AS 3550-1990: Waters*—Determination of solids—Gravimetric method. North Sydney, NSW.

United States Environmental Protection Agency. 1983. *Methods for Chemical Analysis of Water and Wastes*. USEPA, Cincinnati, Ohio.

United States Environmental Protection Agency. 1986, Update I, July 1992. *Test methods for evaluating solid waste: Physical/Chemical methods, SW-846, third edition*. USEPA Washington, DC.

Environmental Monitoring Systems Laboratory (EMSL). Draft June 1987. NPS Survey, Method 4. *Determination of Pesticides in Ground Water by High Performance Liquid Chromatography with an Ultraviolet Detector*. USEPA, Cincinnati, Ohio.

United States Environmental Protection Agency. 1991a. *Methods for the determination of metals in environmental samples*. USEPA Cincinnati, Ohio.

United States Environmental Protection Agency. 1991b, Supplement II, August 1992. *Methods for the determination of organic compounds in drinking water*. USEPA Cincinnati, Ohio.

United States Environmental Protection Agency. 1994. *Method 1664: N-Hexane Extractable Material (HEM) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM) by Extraction and Gravimetry (Oil and Grease and Total Petroleum Hydrocarbons)*. USEPA, Office of Water Engineering and Analysis Division (4303) Washington, DC 20460, EPA-821-B-94-004, October 1994.

Title 40 Code of Federal Regulations, USEPA, 1994. Schedule 3 Forms relating to noise abatement directions

Schedule 3 Forms relating to noise abatement directions

Form 1

(Cl.x))

Protection of the Environment Operations Act 1997 (Section 280)

MAGISTRATE'S RECORD OF COMPLAINT REQUESTING THE ISSUE OF A WARRANT TO ENTER PREMISES

Details of the complaint

On at.....a.m./pm., I, the undersigned Magistrate, received a complaint alleging that the complainant had been denied entry to premises at.....

The complaint was made in person*/by telephone*.

The complaint was made by , a police officer stationed at.....

The complainant caused the complaint to be transmitted to me by , a police officer stationed at *

Further details of the complaint are set out on the other side of this page.

Grounds of the complaint

The complainant stated their belief that:

- offensive noise was being emitted from the premises*
- that offensive noise had, within the 30 minutes preceding the complaint, been emitted from the premises*.

The police officer requested the grant of a warrant because the officer believed it was necessary to enter the premises immediately in order:

- to give a noise abatement direction in relation to offensive noise emitted from the premises*
- to investigate whether an offence arising under section x of the Protection of the Environment Operations Act 1997 has been committed*.

Outcome of consideration of the complaint

After considering the complaint I was satisfied that there were reasonable grounds for that belief.

The grounds on which I relied to justify my finding that there were reasonable grounds for that belief are as follows:

.....
.....
.....
.....

Details of grant of warrant

I have granted my warrant authorising and requiring the complainant to enter the premises and:

- to give a noise abatement direction*
- to investigate whether an offence arising under section x of the Protection of the Environment Operations Act 1997 had been committed*.

The warrant was granted on at.....a.m./pm.

Signed [centre](Magistrate)

* Delete if inapplicable.

(Overleaf)

Details of Complaint

1. Names of persons involved (if known):
2. Location of premises:
3. Name of civilian informant (if known):
4. The complainant police officer believed that:
 - (a) offensive noise was being emitted from the premises*
 - (b) offensive noise had, within the past 30 minutes, been emitted from the premises*.
5. Other information obtained by complainant police officer:
 - (a) Personal observations by police (e.g. noise from the house is being emitted, type of noise, etc.):
 - (b) Civilian informant's information (indications that noise has recently been emitted):
 - (c) Any other information cited as grounds for the belief of the complainant by reason of which the warrant was requested and granted:
6. The officer had been denied entry to the premises, details of which (including anything said or done) are:

* Delete if inapplicable.

Form 2

(Cl. x)

Protection of the Environment Operations Act 1997 (Section 180)

NOTICE OF GRANT OF WARRANT TO ENTER PREMISES

A warrant has been granted to enter premises at

The warrant was granted on the basis of a complaint made by a police officer stationed at police station.

The warrant was granted at a.m./pm on.....

The warrant was granted by a Magistrate of the Local Court.

The warrant was granted subject to the following additional terms: *

..... Signature of complainant police officer

* Delete if inapplicable.

Form 3

(Cl. x)

Protection of the Environment Operations Act 1997 (Section x)

IMPORTANT INFORMATION FOR OCCUPIERS CONCERNING the WARRANT

A warrant has been granted by a Magistrate.

The warrant gives the authority and power to police to enter premises and:

- (a) to give a noise abatement direction (which is a direction under the Protection of the Environment Operations Act 1997 to reduce or stop noise amounting to a nuisance to another person or not to repeat such a noise), or
- (b) to investigate whether a noise abatement direction has been breached.

Reasons for the issue of the warrant

A member of the police force has made a complaint to a Magistrate that the police officer was denied entry to the premises and that the member of the police force believed:

- (a) that offensive noise was being emitted from the premises (or that offensive noise had been emitted within the previous 30 minutes), and
- (b) that it was necessary for a police officer to enter the premises immediately in order to give a noise abatement direction in relation to offensive noise emitted from the premises or to investigate whether an offence arising under section x of the Protection of the Environment Operations Act 1997 (involving a contravention of a noise abatement direction) has been committed.

The Magistrate was satisfied that there were reasonable grounds for that belief.

Details of the warrant

The police officer who was the complainant should have prepared a form containing details of:

- (a) the address of the premises the subject of the warrant, and
- (b) the name of the Magistrate who granted the warrant, and
- (c) the name of the police officer, and
- (d) the time at which the warrant was granted.

You should have been given that form by the police officer who entered the premises

Expiry

The warrant must be executed as soon as practicable after the time it is granted.

The warrant must be executed within 24 hours after the time it was granted.

The warrant may be executed at any time during the day or night.

Use of force

The police may use such force as is necessary for the purpose of entering any premises

This may include breaking open any door.

Any force used must be reasonably necessary.

Limitations on the powers conferred

Only functions and powers authorised under the warrant or by the Act authorising the issue of the warrant may be performed.

The police officer is not authorised to stay on your premises any longer than is necessary.