

Protection of the Environment Operations (Control of Burning) Regulation 2000

under the

Protection of the Environment Operations Act 1997

Explanatory note

The objects of this Regulation are as follows:

- (a) to impose a general obligation to prevent or minimise air pollution when burning in the open or in an incinerator (clause 5),
- (b) to prohibit the burning of certain articles such as tyres (clause 6),
- (c) to impose controls on burning in local government areas (clause 7),
- (d) to provide for the EPA, and for local councils in certain cases, to grant approvals for burning in the open or in an incinerator (clause 9),
- (e) to provide that any such approval by the EPA or local council is to be recorded in the public register of the regulatory authority kept under section 308 of the *Protection of the Environment Operations Act 1997* (clause 10 and Schedule 2).

This Regulation replaces the *Clean Air (Control of Burning) Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*, and is made in connection with the staged repeal of statutory rules under that Act.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general regulation making power) and clause 6 of Schedule 2.

Protection of the Environment Operations (Control of Burning) Regulation 2000

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Application of Regulation	4
Part 2 Control of burning generally	
5 General obligation to prevent or minimise air pollution	5
6 Prohibition on burning certain articles	5
Part 3 Control of burning in local government areas	
7 Offences	7
8 Exceptions	7
9 Approval for certain fires or incinerators	9
Part 4 Miscellaneous	
10 Amendment of Protection of the Environment Operations (General) Regulation 1998	11
11 Existing approvals	11
Schedules	
1 Local government areas in which burning is prohibited	12
2 Amendment of Protection of the Environment Operations (General) Regulation 1998	15

Protection of the Environment Operations (Control of Burning)
Regulation 2000

Protection of the Environment Operations (Control of Burning) Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note. This Regulation replaces the *Clean Air (Control of Burning) Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approval means an approval in force under clause 9.

domestic waste means waste (other than vegetation) that is of a kind and quantity ordinarily generated on domestic premises.

domestic waste management services has the same meaning as in the *Local Government Act 1993*.

Note.

domestic waste management services, as defined in the *Local Government Act 1993*, means services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services.

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

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

Protection of the Environment Operations (Control of Burning)
Regulation 2000

4 Application of Regulation

This Regulation does not apply to or in respect of the following:

- (a) the carrying out of bush fire hazard reduction work under the *Rural Fires Act 1997* that, in the opinion of the authority authorised to carry out the work, or local authority requiring the work to be carried out, is reasonably necessary for the protection of life, property or the environment,
- (b) the destruction, by means of burning, of any prohibited plant or prohibited drug under the *Drug Misuse and Trafficking Act 1985*.

Part 2 Control of burning generally

5 General obligation to prevent or minimise air pollution

- (1) A person who burns anything in the open or in an incinerator must do so by such practicable means as are necessary to prevent or minimise air pollution.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

- (2) Without limiting subclause (1), the means of preventing or minimising air pollution may include the following:
- (a) taking into account the potential for smoke impacting on any person due to wind direction and weather conditions,
 - (b) taking reasonable measures to ensure that the material being burnt is not wet,
 - (c) burning only material that is suitable for disposal by burning, having regard to possible effects on human health and the environment.

6 Prohibition on burning certain articles

- (1) A person must not burn a prohibited article:
- (a) in the open, or
 - (b) in an incinerator that is not licensed under the Act.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

- (2) For the purposes of this clause, the following articles are ***prohibited articles***:
- (a) tyres,
 - (b) coated wire,
 - (c) paint containers and residues,
 - (d) solvent containers and residues,
 - (e) timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP).

Protection of the Environment Operations (Control of Burning)
Regulation 2000

- (3) It is not an offence under this clause to burn a tyre for the purposes of the giving of instruction in methods of fire fighting by an officer or member of a fire fighting authority, or by a fire control officer within the meaning of the *Rural Fires Act 1997*, when acting in his or her official capacity.

Part 3 Control of burning in local government areas

7 Offences

- (1) A person must not burn anything:
 - (a) in the open, or
 - (b) in an incinerator,in a local government area specified in Part 1 of Schedule 1 except in accordance with an approval.
Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.
- (2) A person must not burn any vegetation:
 - (a) in the open, or
 - (b) in an incinerator,in a local government area specified in Part 2 of Schedule 1 except in accordance with an approval.
Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.
- (3) A person must not burn anything (other than vegetation):
 - (a) in the open, or
 - (b) in an incinerator,in a local government area specified in Part 3 of Schedule 1 except in accordance with an approval.
Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.
Note. See clause 8 (4) which provides a specific exception to the offence under this subclause.

8 Exceptions

- (1) It is not an offence under clause 7:
 - (a) to cook or barbecue in the open, or
 - (b) to light or maintain a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities, or

- (c) to burn vegetation, in the course of carrying on agricultural operations, on premises on which the vegetation grew, including:
 - (i) the burning of vegetation for the purposes of clearing (other than for construction), or
 - (ii) the burning of stubble, orchard prunings, diseased crops, weeds or pest animal habitats on farms, or
 - (iii) the burning of pasture for regenerative purposes, or
 - (d) to burn anything for the purposes of the giving of instruction in methods of fire fighting by:
 - (i) an officer or member of a fire fighting authority, or
 - (ii) a fire control officer within the meaning of the *Rural Fires Act 1997*, or
 - (iii) an industrial fire control officer,when acting in his or her official capacity.
- (2) It is not an offence under clause 7 to burn domestic waste, before 1 September 2001, in an incinerator:
- (a) that is installed in a residential building comprising home units, flats or apartments, and
 - (b) that was, immediately before 1 September 2000, in regular use.
- (3) It is not an offence under clause 7:
- (a) to burn anything in an incinerator that is licensed under the Act, or
 - (b) to burn anything in an incinerator that:
 - (i) is equipped with a primary and secondary furnace, and
 - (ii) is designed, maintained and operated in such a manner that ensures the maintenance of appropriate temperatures for the complete combustion of anything that the incinerator is designed to burn and prevents the escape of sparks or other burning material, and
 - (iii) is equipped with suitable equipment that is designed, maintained and operated for the purposes of controlling air impurities in the exhaust gas once the incineration process has been completed, and
 - (iv) is not installed in a residential building comprising home units, flats or apartments.

- (4) It is not an offence under clause 7 (3) to burn domestic waste on residential premises on which the waste was generated if domestic waste management services are not available to those premises.

9 Approval for certain fires or incinerators

Note. An approval may be granted so as to permit burning in circumstances where it would otherwise be prohibited under clause 7.

However, even though this Regulation may permit the burning of fires in the open or in an incinerator in accordance with an approval or because of the operation of clause 8, burning may still be prohibited by an order of the EPA under section 133 of the Act.

- (1) The EPA may grant an approval for the purposes of this Regulation:
- (a) to any class of persons—by means of a notice published in the Gazette, or
 - (b) to any particular person—by means of a written notice given to the person (except in relation to an approval that would be granted to the person in accordance with subclause (2)).
- (2) The council of a local government area specified in Part 2 of Schedule 1 may grant an approval for the purposes of this Regulation in respect of the burning of dead and dry vegetation on the premises on which the vegetation grew in the local government area:
- (a) to any class of persons—by means of a notice published in a local newspaper circulating in the local government area, or
 - (b) to any particular person—by means of a written notice given to the person.
- (3) Before granting an approval for the purposes of this Regulation, the EPA or local council concerned must take the following matters into consideration:
- (a) the impact on regional air quality and amenity,
 - (b) the impact on local air quality and amenity,
 - (c) the feasibility of re-use, recycling or other alternative means of disposal,
 - (d) the views of the sector of the public likely to be affected by the proposed approval,
 - (e) in the case of an approval under subclause (2) (a)—the views of the EPA in relation to the proposed approval.
- (4) An approval:

Protection of the Environment Operations (Control of Burning)
Regulation 2000

- (a) is subject to such conditions (if any) as are specified in the notice by which the approval is granted, and
- (b) may be amended or revoked by means of a notice given or published in the same way as the original notice granting the approval was given or published, and
- (c) remains in force for a period of 12 months (or such other period as is specified in, or implied by, the approval) from the date it is granted unless sooner revoked by the authority that granted it.

Protection of the Environment Operations (Control of Burning)
Regulation 2000

Part 4 Miscellaneous

10 Amendment of Protection of the Environment Operations (General) Regulation 1998

The *Protection of the Environment Operations (General) Regulation 1998* is amended as set out in Schedule 2.

11 Existing approvals

- (1) Subject to subclause (2), an existing approval:
 - (a) is taken to be an approval granted by the EPA under this Regulation, and
 - (b) may be amended or revoked accordingly.
- (2) An existing approval does not have any effect to the extent that it is inconsistent with a provision of this Regulation.
- (3) In this clause:

existing approval means an approval:

 - (a) that was granted under clause 8 of the *Clean Air (Control of Burning) Regulation 1995*, and
 - (b) that was in force immediately before 1 September 2000.

Protection of the Environment Operations (Control of Burning)
Regulation 2000

**Schedule 1 Local government areas in which burning
is prohibited**

(Clauses 7 and 9 (2))

Part 1

Note. All burning (including the burning of vegetation and domestic waste) is prohibited in the areas listed in this Part except in accordance with an approval.

Ashfield	Auburn
Bankstown	Baulkham Hills
Blacktown	Botany
Burwood	Camden
Campbelltown	Canterbury
Concord	Drummoyne
Fairfield	Gosford
Holroyd	Hornsby
Hunter's Hill	Hurstville
Kogarah	Ku-ring-gai
Lane Cove	Leichhardt
Liverpool	Manly
Marrickville	Mosman
North Sydney	Parramatta
Penrith	Pittwater
Queanbeyan	Randwick
Rockdale	Ryde
Shellharbour	South Sydney
Strathfield	Sutherland
Sydney	Warringah
Waverley	Willoughby

Protection of the Environment Operations (Control of Burning)
Regulation 2000

Woollahra

Wollongong

Wyang

Part 2

Note. The burning of vegetation is prohibited in the areas listed in this Part except in accordance with an approval.

Armidale Dumaresq

Albury

Bathurst

Blue Mountains

Cessnock

Coonabarabran

Cootamundra

Dubbo

Goulburn

Greater Lithgow

Greater Taree

Gunnedah

Hawkesbury

Kiama

Lake Macquarie

Lismore

Maitland

Mudgee

Muswellbrook

Newcastle

Orange

Port Stephens

Tamworth

Wagga Wagga

Wellington

Wingecarribee

Wollondilly

Part 3

Note. All burning (other than the burning of vegetation) is prohibited in the areas listed in this Part except in accordance with an approval. However, the burning of domestic waste on residential premises on which the waste was generated is not prohibited if domestic waste management services are not available to those premises.

Armidale Dumaresq

Albury

Bathurst

Blue Mountains

Protection of the Environment Operations (Control of Burning)
Regulation 2000

Cessnock	Coonabarabran
Cootamundra	Dubbo
Goulburn	Greater Lithgow
Greater Taree	Gunnedah
Hawkesbury	Kiama
Lake Macquarie	Lismore
Maitland	Mudgee
Muswellbrook	Newcastle
Orange	Port Stephens
Tamworth	Wagga Wagga
Wellington	Wingecarribee
Wollondilly	

Protection of the Environment Operations (Control of Burning)
Regulation 2000

**Schedule 2 Amendment of Protection of the
Environment Operations (General)
Regulation 1998**

(Clause 10)

**Clause 63 Additional matters to be included in public register: sec
308**

Insert after clause 63 (b):

- (c) any approval granted under clause 9 of the *Protection of the Environment Operations (Control of Burning) Regulation 2000*.