Queensland

Explanatory Notes for SL 1998 No. 29

Environmental Protection Act 1994

ENVIRONMENTAL PROTECTION REGULATION 1998

Short title

The short title of this regulation is the *Environmental Protection Regulation 1998.*

Authorising law

The regulation, in general, is made under the head of power contained in section 220 of the *Environmental Protection Act 1994*, subsection (1) of which states "The Governor in Council may make regulations under this Act".

In addition, there are a number of specific regulation making powers in the *Environmental Protection Act 1994*, such as section 40 which provides that "a regulation may provide that a person must not carry out a level 2 environmentally relevant activity without an approval", and section 213(1)(h) which provides "The administering authority must, for its administration under this Act, keep a register of—

(h) other information prescribed by regulation."

Provisions made under these specific examples are incorporated in sections 5 and 60, respectively.

Policy objectives of the regulation

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends ("ecologically sustainable development").

The objective of the regulation is inturn to provide the basis of effective and efficient administration and enforcement of the object and provisions of the Act.

Achieving the policy objectives of the regulation

The policy objectives are to be met by the regulation providing, amongst other things, for the following—

- regulation of activities and other dealings with ozone depleting substances
- devolution of powers to local government for the administration and enforcement of particular activities under the EP Act and Environmental Protection Policies
- procedures for allowing a single licence to replace multiple licences
- details about fees, including the waiver of fees
- details of information to be contained in the public registers kept by administering authorities
- a schedule, which lists the substances prescribed as regulated wastes
- a schedule, which lists 85 environmentally relevant activities (ERAs), prescribes the activities as level 1 (requiring a licence) or level 2 (requiring an approval), and establishes the maximum annual licence fee for each
- arrangements for transition between the *Environmental Protection (Interim) Regulation 1995* and this regulation; and

when compared with the *Environmental Protection (Interim) Regulation 1995*—

- reduced regulatory burden for the many holders of licences and approvals under the *Environmental Protection Act 1994*, particularly for small business operators
- reduced licence fees for certain ERAs on the basis of being assessed as a lower risk to the environment
- increases in certain thresholds, used in determining whether activities are ERAs, to exclude small businesses
- clarification of the definitions of a number of ERAs to increase certainty for administering authorities.

Consistency with the policy objectives of other legislation

The regulation is not inconsistent with any other legislation.

The requirement under the Statutory Instruments Act to prepare a Regulatory Impact Statement has been complied with.

A Public Benefit Test, for the purposes of National Competition Policy (NCP), is not required, as the current gatekeeping arrangements extend to the *Environmental Protection Regulation 1998*. The subordinate legislation under the *Environmental Protection Act 1994* will be reviewed concurrently with the Act, in accordance with the approved timetable for NCP review.

Alternative ways of achieving the policy objectives

A statement of alternatives is contained in the Regulatory Impact Statement on the *Environmental Protection Regulation 1998*.

Statement of costs and benefits

A statement of costs and benefits is contained in the Regulatory Impact Statement on the *Environmental Protection Regulation 1998*.

Consistency with Fundamental Legislative Principles

The *Legislative Standards Act 1992* outlines a number of fundamental legislative principals. These principals require that the legislation have sufficient regard to the rights and liberties of individuals and the institution

of Parliament. The regulation is consistent with the fundamental legislative principles.

Consultation on the regulation

Government departments, key stakeholders and the community have been consulted on the Regulatory Impact Statement (RIS) for the *Environmental Protection Regulation 1998*, as well, there has been substantial consultation on the *Environmental Protection Regulation 1998* itself.

All comments made during both rounds of consultation have been considered and, where appropriate, changes have been made to incorporate those comments.

The Ministerial Advisory Committee (established by the Minister of Environment to review the effectiveness and fairness of the *Environmental Protection Act 1994*) provided exhaustive comments on the provisions of the *1995 Regulation* and the implementation of the Act, and made over a hundred recommendations to improve the effectiveness and fairness of the regulation. The majority of these recommendations have been implemented, either administratively or legislatively. The *Environmental Protection Regulation 1998* implements the majority of outstanding recommendations.

The Environment Protection Council of Queensland (established by the Minister of Environment to advise on issues relevance to the Department of Environment, in general) has been consulted on both the RIS and draft regulation. This regulation contains a number of the changes recommended by the Council.

The Ministerial Advisory Committee was, and the Environment Protection Council is, comprised of a broad range of stakeholders, including representatives from the industry, local government, academic and community sectors.

General

Throughout this explanatory note a reference to—

- the Act means the *Environmental Protection Act 1994*
- 1995 Regulation means the *Environmental Protection (Interim) Regulation 1995*
- 1998 Regulation means the *Environmental Protection Regulation 1998*
- an environmentally relevant activity (ERA) means an activity prescribed by schedule 1 of this regulation to be an environmentally relevant activity. Each ERA is prescribed as a level 1 or 2 activity
- a level 1 ERA means an ERA for which a licence, under section 39 of the Act, is required
- a level 2 ERA means an ERA for which an approval, under section 5 of the 1995 or 1998 Regulation, is required
- a devolved ERA means an ERA, where the administration and enforcement of the Act, in relation to the activity, is devolved to local government
- the administering authority means the authority charged with the administration and enforcement of the Act, in relation to a particular activity. The Department of Environment is, generally, the administering authority for the Act. However, a local government is the administering authority for a devolved ERA.

Notes on clauses

Clause 1 Simply states the short title of the regulation is the *Environmental Protection Regulation 1998*.

Clause 2 Commences the provisions of the regulation on the following dates—

- Part 5, division 4 on 1 July 1998
- On 1 July 1998, a number of Level 1 ERAs (which are required to hold a licence under the Act) will become Level 2 ERAs (which are only required to have an approval under the Act). The division provides transitional provisions for these activities, relating to such issues as deemed approvals and refund of annual licence fees.

- Sections 4 and 5 (so far as they relate to schedule 1, items 38 and 39) on 1 January 1999
- In effect, items 38 (Land clearing) and 39 (Constructing premises or civil engineering structures) become environmentally relevant activities on this date.
- All other provisions of the regulation on 1 March 1998.

Clause 3 Provides that where definitions for specific words or terms are not found in close proximity to their usage in the regulation, they may be found in the dictionary in schedule 10 of this regulation or schedule 4 of the *Environmental Protection Act 1994* itself. In the absence of a word or term being defined under the Act, it takes its meaning from *Acts Interpretation Act 1954* and if not defined there, the relevant meaning from "The Macquarie Dictionary".

Clause 4 Subsection (1) provides that schedule 1 prescribes which activities are ERAs and whether each is a level 1 activity (requiring a licence under section 39 of the Act) or a level 2 activity (requiring only an approval under section 5 of the regulation.)

Subsection (2) provides that despite an activity being listed in schedule 1 as a ERA, if the activity is being legally carried out under a local government local law and within a detached house (or a separate building within the curtilage of the detached house), the activity is not an ERA (and therefore would not require a licence under section 39 of the Act or an approval under section 5 of the regulation.)

"Curtilage" is defined in the Macquarie Dictionary as meaning "the area of land occupied by a dwelling and its yard and outbuildings, actually enclosed or considered as enclosed".

Subsection (3) provides that despite schedule 1 showing the listed items as level 2 ERAs, they will remain level 1 ERAs (as prescribed in the 1995 Regulation) until 1 July 1998.

Clause 5 Subsection (1) simply provides that a person cannot carry out a level 2 ERA without holding an approval under the *Environmental Protection Act 1994* from the relevant administering authority.

Subsection (2) provides that where a single environmental authority, covering a particular level 2 ERA, has been issued under section 61 of the Act, that activity is not required to hold a separate approval under section 5 of this regulation. Section 61 of the Act permits an administering authority to issue single environmental authority to cover a number of ERAs, subject to part 4, division 2 of this regulation.

Clause 6 Provides that despite a person holding an approval to carry out a level 2 ERA, the person must apply for a new approval, if because of some change to the way the activity is carried out there will be an increase of 10% or more in the release of contaminant into the environment.

The changes which lead to the activity's increased release of contaminant are limited to, the result of any construction or alteration works to a building or structure, or to the result of the installation or alteration to any plant or equipment, used in the carrying out of the activity.

That is, any actual release of contaminant during, and as a result of the construction, alteration or installation phase is not intended to be included in the 10%. Rather, it is the increase in contaminant released from the operational aspects of the activity, once the construction alteration or installation has been completed, that is subject of the 10% increase.

Contaminant is defined in section 11 of the *Environmental Protection Act 1994*.

The provision does not apply to an approval to explore or mine for minerals under item 21 of schedule 1.

Clause 7 Subsection (1) provides that a person who owns or has possession of a controlled article must operate and maintain it as required by the applicable industry code of practice for

carrying out the activity, and must also engage only a qualified person to install, commission, service or decommission the article.

The definitions of both "controlled article" and "controlled substance" are contained in schedule 9 (Dictionary). Industry codes of practice are prescribed in schedule 5.

Subsection (2) provides that a person does not have to comply with an applicable industry code of practice or engage a qualified person to install, commission, service or decommission a controlled article, if the article uses a controlled substance as a solvent for cleaning or degreasing, or if the controlled article is sterilisation equipment.

Clause 8 Subsection (1) requires a manufacturer or importer of a controlled article to attach a label to the article in such a way that the label is visible to a person about to work on the article.

Subsection (2) simply provides details of the label.

Clause 9 Subsection (1) requires that a person who charges motor vehicle airconditioning equipment with refrigerant must attach a label to the equipment or to a prominent place on the vehicle to which the equipment is fitted.

Subsection (2) provides what details must be contained in the label.

Clause 10 Subsection (1) requires that a person who charges commercial, industrial or domestic airconditioning or refrigeration equipment with a Chlorfluorocarbon (CFC) or a Hydrochlorfluorocarbon (HCFC) must attach a label to the equipment.

Subsection (2) provides the details of what must be contained in the label.

Clause 11 Subsection (1) provides that a person carrying out any activity involving the handling or use of controlled substances, mentioned in schedule 3, must not release a controlled substance from any storage vessel or an equipment mentioned in the schedule, such as dry cleaning equipment or fire extinguishing devices.

Subsection (2) provides that person does not commit an offence under subsection (1), if the controlled substance is released according to an applicable industry code of practice for the activity.

Clause 12 Requires that sellers and buyers of controlled substances must, respectively, comply with sections (1) and (2) of schedule 2 (Conditions applying to particular activities involving controlled substances).

Clause 13 Paragraph (a) provides that a person must not engage in certain activities unless they are qualified or acting under the supervision of a qualified person. Schedule 3 contains a list of these activities, including manufacturing, installing, operating, servicing, maintaining or decommissioning commercial, industrial or domestic airconditioning equipment. Section 61 defines a qualified person for an activity as a person who has successfully completed a training course (approved by the Director-General of the Department of Environment and published in a gazette notice) for the activity.

Paragraph (b) permits a person, who has not completed an approved training course for the activity, to carry out an activity listed in schedule 3, where the person is directly supervised by a person having the qualification mentioned in paragraph (a).

Clause 14 Provides that a person, who engages in one the activities listed in schedule 3, which results in (or may result in) the release of a controlled substance into the environment, must recover and reclaim any controlled substance as required by both the applicable industry code of practice and the provisions of schedule 2 (Conditions applying to particular activities involving controlled substances), sections 3 and 4.

Clause 15 Provides for the proper disposal of a controlled substance. Under subsection (1), a person, other than a seller of certain controlled substances, who comes into possession of a controlled substance must deliver the substance to a person who sells controlled substances.

Subsection (2) requires that the seller who has been given a controlled substance under subsection (1), must ask the chief executive for approval to dispose of, or destroy the substance.

Under subsection (3) the chief executive must give the person a written notice which contains details of the way in which the substance is to be disposed of.

Subsection (4) simply requires the seller who has received the substance to comply with the notice.

Clause 16 Subsections (1) and (2) require the owner of bulk storage equipment used in carrying out activities listed in schedule 3, to use and maintain the equipment according to the applicable industry code of practice.

Clause 17 Provides that a person who operates or services equipment that uses a controlled substance as a solvent for cleaning or degreasing, must comply with the applicable industry code of practice and ensure that all controlled substances are properly recovered and reclaimed.

Clause 18 Provides that a person who operates or services dry cleaning equipment, that uses a controlled substance, must comply with the applicable industry code of practice.

Clause 19 Subsection (1) provides that a person must not install any sterilisation equipment, in premises, that contains or uses a controlled substance.

Subsection (2) provides that a person who operates or services sterilisation equipment, that uses a controlled substance, must comply with the applicable industry code of practice when operating or servicing the equipment.

Clause 20 Provides that a person must not manufacture or sell an aerosol product containing a controlled substance unless they have an exemption under the Commonwealth *Ozone Protection Act 1989*. This does not apply to the sale of an aerosol product that contains methyl chloroform or a HCFC, as the only controlled substance.

Clause 21 Provides that a person who manufactures, installs or services commercial, industrial or domestic refrigeration or airconditioning equipment or motor vehicle airconditioning equipment must comply with the applicable industry code of practice for the activity.

Clause 22 Subsection (1) provides that a person must not install, commercial or industrial refrigeration or airconditioning equipment that contains or uses a CFC, in premises.

Despite the prohibition in subsection (1), subsection (2) provides for two situations where a person may install such equipment. These are, where the installation is simply relocating existing equipment within the same premises, or where as soon as it is uninstalled, the equipment is reinstalled in premises owned by the same person who owned the premises it was removed from.

Clause 23 Provides that, unless a person holds an exemption under Commonwealth legislation, it is unlawful to use CFCs in the manufacture of plastic foam.

Clause 24 Provides that a person that who manufactures, installs, services, maintains or decommissions a fixed halon fire extinguishing system must comply with the applicable code of practice.

Clause 25 Subsection (1) provides that a person must have a certificate of approval in order to install a fixed halon system. Further, if the person is the owner of premises or a vehicle, the person must have a certificate of approval in order refill a fixed halon system or allow the system to remain in the building or vehicle.

This section also provides details processes involved in applying for, and obtaining a certificate of approval.

Clause 26 Provides that a person must not test a fixed halon system in a way that results in, or might result in, the release of a controlled substance into the environment.

Clause 27 Provides that, if the owner or occupier becomes aware of a release of a controlled substance from a fixed halon system,

the person must notify the chief executive of the release in writing within 30 days after the release.

Clause 28 Provides that a person must not test a fixed HCFC system in a way that releases a HCFC into the environment.

Clause 29 Subsection (1) provides that it is an offence for a person to sell a portable halon fire extinguisher to another person, if the other person does not produce a certificate of approval to buy and have the portable halon fire extinguisher in the person's possession.

Subsection (2) provides that it is an offence for a person to refill a portable halon fire extinguisher, unless the buyer has produced a certificate of approval to have the extinguisher refilled.

Clause 30 Provides the details of the processes involved in applying for, and obtaining a certificate of approval.

Clause 31 Provides that it is an offence to possess a portable halon fire extinguisher without a certificate of approval.

Clause 32 Provides it is an offence to discharge a fixed HCFC system or a portable HCFC fire extinguisher into the environment, other than to extinguish a fire in an emergency.

Clause 33 Provides it is an offence to discharge a fixed halon system or a portable halon fire extinguisher into the environment, other than to extinguish a fire in an emergency.

Clause 34 Provides it is an offence to sell an aerosol fire extinguisher or a non-refillable fire extinguisher that uses a controlled substance.

Clause 35 Provides for the offence of manufacturing or bringing into Queensland a non-refillable fire extinguisher containing a refrigerant that is a CFC, or commissioning a non-refillable cylinder using a refrigerant that is a CFC.

Clause 36 Provides grounds upon which the chief executive may cancel a certificate of approval.

Clause 37 Provides for the procedure and grounds for cancellation of a certificate of approval.

Clause 38 Provides for the return of a cancelled certificate of approval to the chief executive, where the chief executive has cancelled the certificate of approval.

Clause 39 Subsection (1) provides that the administration and enforcement of the Act, in relation to the listed ERAs, is devolved to the local government in whose area the ERA is carried out.

Subsection (2) provides that such devolution does not occur where more than one ERA is carried out on the same site and where the administration and enforcement of one of the other ERAs is not devolved to the local government.

Subsection (3)(a) provides that despite an ERA being listed in subsection (1), the administration and enforcement of the Act for that activity is not devolved to the relevant local government where the ERA is undertaken by a State or local government.

Further, subsection (3)(b) provides that where the activity is itinerant and carried out in more than one local government area, the administration and enforcement of the Act for the activity is not devolved to local government. This provision is intended to preclude the need for a person, carrying out a devolved ERA, itinerantly across more than one local government area, to have to obtain an environmental authority in each of the local government areas operated in.

It is possible, however, for two or more local governments to establish a joint local government, under part 2 of *Local Government Act 1993*, for the purpose of administering and enforcing the Act in relation to devolved ERAs. If this occurs, the *Local Government Act 1993* provides that the joint local government is deemed to be a single local government for that purpose. Therefore, subsection (2)(b) would not apply, and the administration and enforcement of the itinerant ERA would be devolved instead to the joint local government.

Subsection (4) simply clarifies that under the *Acts Interpretation Act 1954*, section 7 and the *Statutory Instruments Act 1992*, section 14 the reference to 'the Act' includes a reference to a statutory instrument made under the Act, including, for the *Environmental Protection Act 1994*, regulations and environmental protection policies. This means any provisions under the Act, this regulation, any environmental protection policy or other statutory instrument made under the Act, that are necessary for administering and enforcing any devolved matter, are available to the local government to which the activity is devolved. For example, an authorised person of an administering authority may issue an infringement notice, under the Environmental protection (Noise) Policy 1997, to a person carrying out a 'devolved' ERA, where the person causes excessive noise.

Clause 40 Devolves the administration and enforcement of the Act, in relation to certain activities which are not ERAs, to local government. (Section 4(1) only devolves ERAs to local government. These additional devolved activities are those that would have been devolved ERAs under sections 4(1) and 39(1), if section 4(2) had not exempted them (because they were carried out lawfully under a local government local law and within a detached house or a separate building within the curtilage of the detached house.)

The provision means that, despite not being ERAs, and therefore not being required to hold a licence or approval, the local government may utilise other administration and enforcement provisions provided under the Act, such as the issue of infringement notices for causing environmental nuisance under an environmental protection policy.

For example, the ERA of motor vehicle workshop is devolved to local government under section 39 of this regulation. However, a person carrying out a motor vehicle mechanical repairs on a commercial basis from the garage attached to the person's home is exempted from being an ERA by section 4(2). Section 40 provides that, despite the person's activity not being an ERA, the administration and enforcement of the activity is still devolved to local

government. A local government, therefore, has the power to take action against the person, if the activity causes environmental harm or nuisance.

Clause 41 Simply states that clauses 42 and 43 only apply in two circumstances.

Firstly, where an application for an environmental authority relates to an environmentally relevant activity that is itinerant and operates in more than one local government area. (The Macquarie Dictionary defines itinerant as "travelling from place to place".)

Secondly, sections 42 and 43 apply where a single application has been made to an administering authority for an environmental authority, and where the application relates to more than one ERA on the one site or multiple ERAs on more than one site. Section 39 of the Act (and section 5 of this regulation) provide that a person must not carry out a level 1 ERA without a licence (or a level 2 ERA without an approval). This means that the application under section 61 of the Act can only relate to ERAs carried out by the same person. Under the *Acts Interpretation Act 1954*, section 32D, a person includes a corporation and a body corporate.

Clause 42 Subsection (1) provides that the application must be accompanied by an "integrated environmental management system" (an IEMS). The IEMS is a submission detailing how the applicant proposes to manage the environmental impacts of the multiple activities.

Subsection (2) lists the matters that an IEMS must address.

The intention of an IEMS is to reduce the regulatory impact on a person carrying out multiple ERAs, where the person can show that there is a reduced risk of environmental harm because of the way the activities are integrated and managed environmentally. If addressed adequately, the matters listed in subsection (2) will provide the administering authority with evidence of how the person will manage the ERAs to reduce the environmental risk.

An example of effective management and integration under paragraph (4) would be the reuse of a waste generated by one of the ERAs as feedstock in operating another of the ERAs, so that the overall waste produced under the single licence would be less.

Clause 43 Provides that an IEMS must be considered as part of the "standard criteria" defined in schedule 10 of the Act. Paragraph (j) of the definition of "standard criteria" reads, any other matter prescribed by regulation.

The "standard criteria" are used by an administering authority in deciding applications under the Act for environmental authorities, environmental management programs and environmental protection orders.

Clause 44 Subsection (1) provides that the general fees payable under the Act (other than annual licence fees - which are shown against each ERA in schedule 1) are listed in schedule 6 of this regulation.

Subsection (2) provides that where a local government has prescribed a lower fee than contained in schedule 6, the relevant fee is that prescribed in the resolution or local law. Section 196, subsections (3)(a) and (4) of the Act permit a local government to make a resolution or a local law prescribing a lower fee than that prescribed in schedule 6.

Subsection (3) provides that despite schedule 6 prescribing an application fee, for an approval under section 41 of the Act, as being $200, the fee is not payable for an application to explore for, or mine, minerals under a mining claim or prospecting permit granted under the *Mineral Resources Act 1989*. Schedule 1 prescribes mineral exploration or mining to be a level 2 ERA.

Despite this section, section 49 of this regulation provides that a person may apply to the administering authority for a whole or partial waiver of the licence application fee prescribed in paragraph (2) of schedule 6 or by a local government local law or resolution.

Clause 45 Provides that where an administering authority does not grant an application for a licence, it must refund the annual licence fee component of the application fee, ie. all but $200 of the application fee.

The application fee in schedule 6. is $200 plus the amount equal to the annual licence fee (Annual licence fees are prescribed in sections 46 and 47 of this regulation.) In the case of a refusal, the $200 is retained by the administering authority to cover the basic administration cost of assessing the application.

Clause 46 Provides that the annual licence fees for ERAs, that are not devolved to local government, are listed in schedule 1.

However, under section 49 of this regulation, a person may apply to the administering authority for a whole or partial waiver of that annual licence fee.

Clause 47 Provides that the annual licence fees for ERAs, that are devolved to local government, are listed in schedule 1. However, if a local government has prescribed lower annual licence fees under section 196 of the Act, then the annual licence fee for the ERA is that fee prescribed by the resolution or local law.

However, under section 49 of this regulation, a person may apply to the administering authority for a whole or partial waiver of the annual licence fee.

Clause 48 Provides where an administering authority issues a single environmental authority for two or more ERAs, the annual licence fee for the single authority is equal to the licence fee for the ERA which has the highest annual licence fee of any of the ERAs under the authority.

The determination of this fee for a single environmental authority that is devolved to local government is also subject to section 47(a).

However, a person may still apply to the administering authority for a whole or partial waiver of this fee under section 49 of this regulation.

Clause 49 Provides that a person may apply to the administering authority for a whole or partial waiver of a annual licence fee or licence application fee.

Subsection (2)(a) provides where the application is for waiver of a licence application fee, the person can only apply for the waiver at the same time the application for the environmental authority is lodged. For such applications, the applications for an environmental authority and a waiver of fees is made concurrently. Under subsection (3), the applicant only has to pay $200 up front. However, under section 51 of this regulation, if the application for waiver is refused or only a partial waiver is granted, the applicant must pay the outstanding amount of the fee before the licence can be issued.

Subsection (2)(b) provides where the application is for waiver of a annual licence fee, the person can only apply for the waiver at the same time as the annual return for the environmental authority is lodged under section 68 of the Act. The intent of this time restriction is to provide the administering authority information on the previous twelve months operation of the activity, so that it can validly assess the grounds for fee waiver prescribed under section 50 of this regulation.

Section 62(1)(b) of this regulation provides that a person, who is aggrieved by a decision of the administering authority to refuse an application for a waiver of an application fee or annual licence fee, has review and appeal rights under the Act.

Clause 50 Subsection (1) provides that the administering authority may only waive payment of application fee or annual licence fee on the following 4 grounds—

The payment would cause a person financial hardship. In deciding to waive whole or part of a fee based on financial hardship, an administering authority may seek relevant financial information from the applicant under section 62 of the Act, in order to assess the validity of the application.

The person holds a concurrent authority. A concurrent authority is a licence or other authority issued under another Act, where in determining whether to grant the authority, the activity's impacts upon one or more environmental values were considered.

(Section 9 of the Act defines environmental value as a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety or another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.)

Subsection (2) adds, in deciding whether to waive payment, where a concurrent authority exists, the administering authority must consider, the extent to which the environmental values were considered and the extent to which the activity is regulated under the other Act, when compared to the extent considered or regulated under the *Environmental Protection Act 1994*.

For example, if a person operating a greyhound kennel already paid a fee to a local government under its local laws to operate the kennel, and in considering approving the kennel, the local government considered noise impacts upon the surrounding residents, the approval under the local law could be considered to be a concurrent authority.

The amount the local government waived the person's application or annual licence fee under the Act would depend on the overlap in administration between the approval under the local law and the approval under section 5 of this regulation. If, for example, in issuing the approval under the local law, the administering authority considered only noise, and not air, water and waste issues, there would still be substantial work to undertake in assessing the application for an environmental authority under the Act. Therefore, the administering authority may decide only waive a small percentage of the application fee.

Conversely, if all environmental issues were assessed for the approval under the local law, the administering authority may wish to waive the application fee in full.

The risk of material or serious environmental harm from the activity is significantly smaller than the risk associated with most other activities of its type.

For example, a tourist resort, that hired out golf buggies to its guests and serviced the golf buggies in an on-site workshop, would require a licence for item 28 (Motor vehicle workshop) if it carried out mechanical repairs in the course of the commercial enterprise of hiring golf buggies. The administering authority may desire to waive, whole or part of, the payment of the annual licence on the basis of the amount of mechanical repairs undertaken was significantly less than most other motor vehicle workshops.

The risk of environmental harm or environmental nuisance from the activity is insignificant.

For example, a person producing 100kg of boutique pipe tobacco in a year, by purchasing pre-processed tobacco and flavouring it with alcohol. An administering authority may consider granting a full waiver of an the annual licence fee, based upon the fact that the person produces no solid or liquid waste, no excessive noise and no odour.

Subsection (3) provides a list of matters that an administering authority must consider in deciding whether to waive payment.

Using the same example, of the boutique tobacco manufacturer, mentioned above, the administering authority may accept that the person produces no solid or liquid wastes because of the waste minimisation practices employed by the licensee. Ie. all wastes are recycled back into the manufacturing process.

Conversely, using the example of the golf buggy maintenance workshop mentioned above, an administering authority may not grant an application for fee waiver, based upon the risk of environmental harm or environmental

nuisance from the activity not being insignificant. This decision could be based upon the person storing 2 stroke motor fuel and used oil in old drums in the workshop, and not having any contingency plans in place to prevent spilt fuel from entering the adjoining storm water drain. Therefore, the administering authority may consider the risk of environmental harm from the activity, not insignificant.

Subsection (4) simply provides that the administering authority may only waive payment, if it is satisfied the activity is being, or will be, carried out in a way that complies with the licence.

Section 62(1)(b) of this regulation provides that a person, who is aggrieved by a decision of the administering authority to refuse an application for a waiver of an application fee or annual licence fee, has review and appeal rights under the Act.

Based on the waiver provisions of the 1995 Regulation, many administering authorities have established 'incentive licensing schemes'. These schemes operate on the basis of fee waivers being able to be granted on the two grounds of reduced risk of environmental harm. ie. the risk of material or serious environmental harm from the activity is significantly smaller than the risk associated with most other activities of its type; and the risk of environmental harm or environmental nuisance from the activity is insignificant. These administering authorities have put documented systems in place to consider the prescribed matters that must be addressed in granting a fee waiver, and in a number of cases preset and documented the proportions of the fee that can be waived for ERAs based on the extent to which the stated criteria are achieved. This section will continue to provide the statutory basis for these 'incentive licensing schemes'.

Clause 51 Subsection (1) provides that where the administering authority grants a full or partial waiver for an application for a waiver of annual licence fee under section 49(2)(b), it must repay the waived amount to the applicant. (It should be noted

that under section 68 of the Act, the person must have already paid their annual licence fee before the anniversary of the licence.)

Subsection (2) provides that where the application for waiver of an amount of an application fee is refused or a partial waiver is granted, the applicant must pay the outstanding amount of the fee before the licence can be issued. (Section 49(3) provides where the application is for waiver of a licence application fee, the applicant only has to pay $200 up front.)

Clause 52 Subsection (1) prescribes the fee required by section 84 of the Act for consideration of a draft environmental management program (EMP). The fee is the amount the administering authority considers reasonable, but cannot be more than the reasonable cost of considering whether or not to approve the draft EMP.

Subsection (2) prescribes a fee for assessment of a persons annual return and monitoring a person's compliance with an EMP. The fee is the amount the administering authority considers reasonable, but cannot be more than the reasonable cost of assessing the person's annual return and compliance with their EMP.

The Act defines an environmental management program as a specific program that, when approved, achieves compliance with this Act for the matters dealt with by the program by either, reducing environmental harm or detailing the transition to an environmental standard.

Clause 53 Provides that the administering authority must, not only insert a copy of each licence on its register of licences, as required by section 213 of the Act, but also record the industry code for the ERA on the register. The industry code is that assigned to the activity under Australian and New Zealand Standard Industrial Classification, 1993.

Clause 54 Provides that the administering authority must, not only insert a copy of each approval on its register of approvals, but also record the industry code for the ERA on the register.

Clause 55 Prescribes which details of environmental reports, conducted or commissioned, at the request of the administering authority, under sections 72 or 73 of the Act, need to be kept on the register of environmental reports required under section 213 of the Act.

The Act defines—

an "environmental report" as a report on an environmental evaluation; and

an "environmental evaluation" as an evaluation of an activity or event to decide—

(a) the source, cause or extent of environmental harm being caused, or the extent of environmental harm likely to be caused, by the activity or event; and

(b) the need for an environmental management program for the activity or event.

Clause 56 Prescribes which details of the results of any monitoring programs carried out under the Act, need to be kept on the register of monitoring program results required under section 213 of the Act.

Clause 57 Subsection (1) prescribes which details of any environmental management programs (EMPs) approved under the Act, need to be kept on the register of EMPs required under section 213 of the Act.

In addition, subsection (2) provides where, as a condition of an EMP, the holder of the approval for the EMP is required to prepare a public statement about the person's environmental management of the activity, the administering authority must also insert a copy such statements on the register.

Clause 58 Prescribes which details of environmental protection orders (EPOs) issued by the administering authority under the Act, need to be kept on the register of EPOs required under section 213 of the Act.

Clause 59 Provides that the administering authority must record details of any limitation to an authorised person's powers, stated in their instrument of appointment, in the authority's register of authorised persons.

Clause 60 Subsection (1) provides that where an administering authority has a role in administering and enforcing the Act, such as devolution of powers to administer and enforce activities mentioned in sections 39 and 40, it must keep a register of approved codes of practices relating to such activities.

Section 219(1) of the Act provides " The Minister may, by written notice, approve codes of practice stating ways of achieving compliance with the general environmental duty for any activity that causes, or is likely to cause, environmental harm."

Subsection (2) provides the administering authority must also insert in the register, a copy of each relevant approved code of practice and a copy of the gazette notice by which the Minister approved the code.

Clause 61 Provides that the Chief Executive (the Director-General of the Department of Environment) may approve training courses relating to handling or using controlled substances or installing, commissioning, servicing or decommissioning controlled articles.

"controlled substance" means an ozone depleting substance (whether existing alone or mixed with another substance), and includes the refrigerants R500 and R502, but does not include a substance containing less than 1% of an ozone depleting substance.

"controlled article" means an article, or the part of an article, that contains or uses a controlled substance as a working fluid in the operation or structure of the article, but does not include foam manufacturing equipment.

Subsection (2) provides that a person who successfully completes an approved training course for an activity dealing

with controlled substances or controlled articles is a "qualified person" for the purposes of part 3 of this regulation.

Subsection (3) simply provides that a qualified person who has successfully completed a training course to train people in handling or using CFCs is also a qualified person to engage in an activity using HCFCs.

Subsection (4) provides that a qualified person who has successfully completed a training course to train people in installing, commissioning, servicing or decommissioning commercial air conditioners, using CFCs in its operation, is a qualified person for installing, commissioning, servicing or decommissioning domestic air conditioners using HCFCs in its operation.

Clause 62 Paragraph (a) provides that the review and appeal provisions under chapter 6, part 3 of the Act apply to decisions of the chief executive, in relation to refusing an application for, imposing conditions upon, and cancelling a certificate of approval issued under sections 26 or 31 of this regulation.

Paragraph (b) provides the similar review and appeal rights as paragraph (a) to persons aggrieved by a decision of an administering authority to refuse to waive, in whole or in part, a licence application fee or an annual licence fee.

Clause 63 Provides that a local government authorised person can be appointed, by the chief executive to be an authorised person for the purpose of administering and enforcing the Act, as a delegate of the State.

For example, if the chief executive (the Director-General of the Department of Environment) delegates the power to administer a particular ERA to a local government, under section 198 of the Act, the chief executive can also appoint an authorised person of the local government to be a authorised person for the purpose of the delegation.

Clause 64 Simply repeals the *Environmental Protection (Interim) Regulation 199*5, which this regulation replaces.

Clause 65 Provides a number of definitions that apply only to specific transitional provisions within part 5 of this regulation.

Clause 66 Provides a list of the ERAs to which division 3 (sections 67 and 68) applies. The activities are those where no material change has occurred in the description of the ERA, the level of the ERA or the annual licence fee. In addition, those activities, where there are no changes to the description of the activity, but from 1 July 1998 change from level 1 to level 2, are listed. The reason for the additional ERAs is that even though they change to level 2 ERAs on 1 July, they will still be level 1 ERAs under the 1998 Regulation from 1 March 1998 to 1 July 1998. **(NB: all item numbers in this section correspond to the item numbers for the activity as prescribed in schedule 1 of the 1995 Regulation.)**

Clause 67 Provides that where an application is made for a licence or an approval to carry out an ERA, or an application is made to amend or transfer a licence under the 1995 Regulation, the application is taken to be an application under the 1998 Regulation. Since the division only applies to those ERAs where there is no material change between the 1995 Regulation and the 1998 Regulation, an application is taken to be for the equivalent ERA under the 1998 Regulation. ie. on 1 March 1998, the activity is described in exactly the same way as the 1995 Regulation, other than grammatical changes in drafting style, or new item numbers in schedule 1, as a result of the reordering of ERAs.

Clause 68 Provides that where a person held a licence or an approval for the carrying one of the ERAs listed in section 66, before 1 March 1998, the licence or approval is taken be a licence or an approval under this regulation.

This provision provides continuity for the licences and approvals in effect at the repeal of the 1995 Regulation.

Clause 69 Provides that those activities that were ERAs under the 1995 Regulation, but are no longer ERAs under the 1998 Regulation are subject to sections 70 and 71.

Clause 70 Provides that where a person had made an application for a licence or an approval before the repeal of the 1995 Regulation, and a licence or an approval had not taken effect, the administering authority must advise the person they no longer need the licence or approval to carry out the activity.

In addition, the administering authority must refund to the person the appropriate amount of the application fee paid by the person.

Subsection (2)(b)(i) provides that where the application was for a licence, the administering authority must refund the annual licence fee component of the application fee. (Schedule 6 of the 1995 Regulation prescribed $200 plus an amount equivalent to the annual licence fee. The additional amount is the licence fee component.)

Further, where the application had been decided, the administering authority retains the $200 (as the fee for considering the application.) Where the application has not been decided, the administering authority may keep an amount of that $200 that in considers reasonable, based upon any costs already incurred in considering the application, and must refund the balance.

Subsection (2)(b)(ii) provides that where the application was for an approval, the administering authority may keep an amount of application fee that in considers reasonable, based upon any costs already incurred in considering the application and must refund the balance.

Subsections (3) and (4) provide how an administering authority's decision on the amount refunded, can be reviewed or appealed under chapter 6 part 3 of the Act.

Clause 71 Provides similar notice, refund, review and appeal provisions to section 70. The provisions apply to undecided applications for amendment or transfer of licences only.

Clause 72 Provides a list of the ERAs, where there is a material change in the description of the ERA, the level of the ERA or the annual licence fee. Included are those activities where there are both changes to the description of the activity, and from

1 July 1998, a change from level 1 to level 2. **(NB: all item numbers in this section correspond to the item numbers for the activity as prescribed in schedule 1 of the 1995 Regulation.)**

Sections 73 to 77 apply to a person carrying out an ERA mentioned in this list, where the person held a licence or an approval at the end of 28 February 1998.

Clause 73 Subsection (1) provides that where a person had a licence or approval mentioned in section 72, the person is taken to have an environmental authority to carry out the person's activity. The authority is subject to the same conditions as the licence or approval in existence immediately before to 1 March 1998. (Section 49 of the Act allows a person to seek amendment of a licence, if the person believes the conditions carried over are no longer appropriate.)

Subsection (2) provides that, if the administering authority gives notice under section 74 to the person, stating that the environmental authority required to carry out the activity is an approval, the environmental authority is taken to be the approval required. The approval continues in force until 28 February 2001.

Subsection (3) provides that, if the administering authority gives a notice to the person under section 74, stating the person no longer requires an environmental authority to carry out the activity, the authority the person is taken to have had under subsection (1) ceases to exist.

Clause 74 Subsection (1) provides that, as soon as practicable after 1 March 1998, the administering authority must determine whether person's activity is an ERA under the 1998 Regulation, and if it is, what item of schedule 1 it falls under.

In addition the administering authority must give a notice, advising the person of one of the following—

- that the person no longer requires an environmental authority to carry out the activity;

- the person needs an approval to carry out the person's activity instead of a licence. Ie. the person's activity is now a level 2 ERA; or
- the person still requires and environmental authority. However, the ERA described under the environmental authority, in existence before 1 March 1998, is not described in the same way as the ERA that the person is required to hold under the 1998 Regulation.

A number of examples are given for each of the 3 scenarios.

Examples of paragraph (b)(i)—

Example 1. Because the word 'chemical' is strictly defined in schedule 9 of the 1998 Regulation, it is possible that a substance that was a 'chemical' under the 1995 Regulation is no longer a 'chemical' under the 1998 Regulation. If a persons activity was dealing with such substances only, the person would no longer require an environmental authority to carry out item 6 (Chemical manufacturing, processing or mixing) or item 7 (chemical storage).

Example 2. In schedule 1 of the 1995 Regulation, a person was required to hold a licence to operate any 'special sewage treatment works'. Under the 1998 Regulation, a person is no longer required to hold a licence unless the 'special sewage treatment works' has a peak design production capacity to treat the equivalent sewage volume of 21 average persons. Therefore, if a person was operating a 'special sewage treatment works' that had a peak design capacity of 5 average persons, then the person no longer requires a licence.

Example 3. Under item 81 of the 1995 Regulation (Regulated waste recycling or reprocessing), a person would have required a licence to recycle or reprocess the organic wastes used to manufacture soil conditioners, if those organic wastes were also regulated wastes. The person would also require a licence under item 73 (Compost manufacture). Under the 1998 Regulation, a licence is not required for reprocessing or recycling a regulated waste where the person is licensed under the item for soil conditioner manufacture.

Examples of paragraph (b)(ii)—

Example 1. Under item 10 of the 1995 Regulation, a person manufacturing 20,000l of water based paint per year was required to have a licence, under the 1998 Regulation. The same activity now falls into item 10(b) of this regulation, which means the person only requires an approval to carry out the activity.

Example 2. Under item 49 of the 1995 Regulation, a person carrying out a rendering operation, in works having a design production capacity of 25 tonnes per year, was required to have a licence, under the equivalent ERA in this regulation (item 50(b)) the person is only required to have an approval to carry out the same activity.

Examples of paragraph (b)(iii)—

Example 1. Under item 2 of the 1995 Regulation, a person operating a cattle feedlot, which had the capacity to hold 150 cattle, was required to have a licence, under item 2 of this regulation, the person may require a licence or an approval to carry out the same activity. Because of the change from number of cattle to 'standard cattle units', the administering authority may have to request more information from the person to determine whether the activity falls above or below the 150 standard cattle unit threshold.

Example 2. Under item 50 of the 1995 Regulation, a person manufacturing more than 1 tonne of plastic products per year was required to hold a licence to carry out the activity. A licence is still required under item 51 of this regulation. However, item 51 has 2 separate categories which require a licence. The administering authority may have to seek further information to determine which category the person's licence will fall into.

Subsection (2) provides that if the person is required to have an environmental authority under subsection (1)(b)(ii) or (iii), the administering authority's notice must also state the item of schedule 1 of the 1998 Regulation that the person's activity falls under; whether the person requires an approval or a licence; and that the person is taken to have an environmental authority to carry out that activity.

If the person requires a licence, then the notice must state the procedures for amending the licence. (The transition from the 1995 Regulation to the 1998 Regulation may mean that the licence conditions may no longer be appropriate, and amendment of the conditions is desirable).

If the person requires an approval, then the notice needs to state that the approval will remain in force only until 28 February 2001, and to continue on after that the person will be required to apply for a new approval. (Section 45 of the

Act provides that an approval continues for the term stated in it. Three years has been chosen as the term for those approvals carried over from the 1995 Regulation.)

Subsection (3) provides that where a refund is to be given under section 75, the notice must also state the amount of the refund.

Subsection (4) simply provides the matters that the administering authority must address in determining whether a person is required to hold an environmental authority, and if so, of what level.

Subsections (5) and (6) provide how an administering authority's decision on whether a person's activity is an ERA under the 1998 Regulation, and if so, its decision on the level of the ERA, can be reviewed or appealed under chapter 6 part 3 of the Act.

Clause 75 Subsection (1) provides for proportional refunds of annual licence fees for activities which are level 1 ERAs under both the 1995 Regulation and the 1998 Regulation, and where the annual licence fee under the 1998 Regulation is less than the fee under the 1995 Regulation.

Subsection (2) provides that as soon as practicable after 1 March 1998, the administering authority must refund to the person the amount of the annual licence fee reasonable in the circumstances.

Subsection (3) provides the matters that the administering authority must have regard to, in determining the reasonable amount of refund.

For example, for an ERA where —

the prescribed fee under the 1995 Regulation for an ERA was $1000;

the fee the person actually paid was $500 (the person received a 50% fee waiver under section 49 of the 1995 Regulation);

the last anniversary day of the licence 1 September 1997;

the next anniversary day of the licence 1 September 1998; and

the annual licence fee prescribed under the 1998 Regulation for the ERA is $500—

the administering authority may determine the reasonable refund in the following way. The person paid $500. The amount of time from 1 March 1998 to the next anniversary day (1 September 1998) is exactly half a year. Therefore, the fee that the person has paid in advance for the period between 1 March and 1 September 1998 is $250. The amount that the person would be liable to pay under the 1998 Regulation for the 6 months from 1 March 1998 until the next anniversary day is $125 ($500 less 50% fee waiver equals $250 per annum or $125 for 6 months). The administering authority could therefore come to the conclusion that the person had paid $250 in advance under the 1995 Regulation, where only $125 would have been due for that period under the 1998 Regulation, so the refund would be $125.

Subsections (4) and (5) provide how an administering authority's decision on a refund of annual licence fee, can be reviewed or appealed under chapter 6 part 3 of the Act.

Clause 76 Subsection (1) provides for proportional refunds of annual licence fees for activities which were level 1 ERAs under the 1995 Regulation and under the 1998 Regulation will not have to pay an annual licence fee because the activity is no longer an ERA or is now a level 2 ERA.

Subsection (2) provides a formula for the refund. For example, where—

a level 1 ERA under the 1995 Regulation is no longer an ERA under the 1998 Regulation;

the annual licence fee actually paid by the person was $1000; and

the next anniversary date of the licence issued under the Act is 1 June 1998—

FP equals $1000 and **D** equals 92 days. Therefore, the amount of refund due (**AR**) is

$1000 x 92 (365 or $252.05.

Clause 77 Provides that administering authorities must endorse a person's environmental authority to show the effect of its decision under section 74(1) (Ie. that an environmental authority is no longer required or that only an approval is required).

The section also provides, that if the administering authority decides that a person no longer requires a licence, but still requires an approval, the administering authority must record the relevant details on its register of approvals.

Clause 78 Provides that division 5 (sections 78 to 85) applies to those ERAs mentioned in section 4(3). Ie. those level 1 ERAs that become level 2 ERAs on 1 July 1998.

NB: Division 5 commences on 1 July 1998.

Clause 79 Subsections (1) and (2) provide that an "affected person" is taken to have an approval to carry out the person's activity until 28 February 2001, subject to the conditions stated in the persons licence.

The conditions are those to which the licence was subject to immediately before 1 March 1998, or if the administering authority amended the conditions of the environmental authority after 1 March 1998, the amended conditions.

An "affected person" is defined in section 65 and means a person who, immediately before 1 March 1998, held a licence for the activity (or held a licence for an item mentioned in section 4(3), but between 1 March 1998 and 1 July 1998, the administering authority made a decision under section 74 that the person only required an approval).

Subsection (3) provides that administering authority must endorse a person's environmental authority to indicate it is now taken to be an approval until 30 June 2001 and record the relevant details on its register of approvals.

Clause 80 Subsection (1)(a) provides that as soon as practicable after 1 July 1998 the administering authority must send a notice to the "affected person" indicating the activity is now a level 2 ERA and is taken to have an approval until 30 June 2001. The notice must also state that if the person wishes to carry out the activity after this date, the person will have to apply for a new approval. (Section 45 of the Act provides that an approval continues for the term stated in it. Three years has been chosen as the term for those approvals carried over from the 1995 Regulation.)

Subsection (1)(b) provides for proportional refunds of annual licence fees for activities which were level 1 ERAs under the 1995 Regulation and under the 1998 Regulation will not have to pay an annual licence fee because the activity is a level 2 ERA from 1 July 1998. For example, where—

the annual licence fee paid by the person was $1000; and

the next anniversary date of the licence issued under the Act is 1 September 1998—

FP equals $1000 and **D** equals 62 days. Therefore, the amount of refund due (**AR**) is

$1000 x 62 (365 or $169.86.

Subsection (2) provides that no application fee is payable for the new application to be made to allow the person to carry out the activity after 1 July 1998.

Clause 81 Subsection (1) provides that where a person made an application for a licence to carry out a level 1 ERA (that from 1 July 1998 became a level 2 ERA) and before 1 July 1998, the administering authority had issued a licence to take effect from 1 July 1998 or later, the person is taken to have an approval.

Subsection (2) provides that the approval will be subject to the conditions that it would have been subject to, had the licence taken effect.

Subsection (3) provides that the approval takes effect from the day the licence would have taken effect and continues in force until 30 June 2001.

Subsection (4) provides that as soon as practicable after 1 July 1998, the administering authority must send a notice to the person stating that from 1 July 1998 the ERA is a level 2 ERA, and the person's licence is taken to be an approval to take effect from the day the licence would have taken effect. The notice also must state that the approval is subject to the conditions the licence would have been subject to, and will continue in force until 30 June 2001.

Subsection (4) also provides that where a person paid an application fee for the licence, the administering authority must refund the annual licence fee component of the application fee. (The application fee in schedule 6. is equal to $200 plus the amount equal to the annual licence fee (Annual licence fees are prescribed in sections 46 and 47 of the 1998 Regulation.) The $200 is retained by the administering authority to cover the basic administration cost of assessing the application.)

Subsection (5) provides that administering authority must endorse a person's licence to indicate it is now taken to be an approval until 30 June 2001 and record the relevant details on its register of approvals.

Clause 82 Subsections (1) and (2) provide that where a person made an application for amendment or transfer of a licence for a level 1 ERA (that from 1 July 1998 became a level 2 ERA), and before 1 July 1998, the administering authority had not decided the application, the administering authority must refund the amount of the application fee it considers reasonable. The administering authority may retain an amount it determines as reasonable for the amount of work undertaken in assessing the application up until 1 July 1998.

Subsections (3) and (4) provide how an administering authority's decision on a refund of an amount of an application fee, can be reviewed or appealed under chapter 6 part 3 of the Act.

Clause 83 Provides that, in applying part 5 divisions 3 to 6, to a licence, an approval or an activity, the administering authority may, under section 50(1)(b)(viii) of the Act, amend the licence at any time, if the administering authority considers it necessary or desirable. For example, amendments to licence and approval conditions and ERA descriptions are likely to be necessary in light of the transition from the 1995 Regulation.

Clause 84 Is a catch all transitional provision to give validity to actions under Part 3 (Ozone Depleting Substances) or Part 4 (Administration) of the 1995 Regulation that need to continue in force under the 1998 Regulation.

Clause 85 Provides that an approved training course, notified under section 58 of the 1995 Regulation, is taken to be an approved training course notified under section 61(1) of the 1998 Regulation. The training courses relate to training people to engage in certain activities relating to ozone depleting substances.

Schedule 1 Provides a description of individual ERAs, whether each activity is a level 1 or a level 2 ERA and the scheduled annual licence fee component (maximum annual licence fee). Schedule 1 also indicates by way of an *asterisk* that the administration and enforcement of the Act as it relates to each ERA is devolved and by way of a *dagger* symbol that the ERA is being re-classified from level 1 to level 2 effective from 1 July 1998.

A number of terms are used repeatedly within schedule 1. The following are explanations of some of these terms—

Facility for an ERA is defined in schedule 9 to mean "a building or structure or complex of buildings or structures specifically used for the activity. This means that, a farmer that simply spreads food processing waste (a regulated waste under schedule 7) on crop land to increase the organic

content of the soil, does not operate, either a facility for disposal of regulated waste or a facility for recycling or reprocessing regulated waste, because the farmer is not operating a facility to dispose, recycle or reprocess the waste.

Design production capacity, peak design capacity, design capacity are measurements of volume or amount of product or material that a plant or facility is capable of putting out, and is subject to factors affecting normal operating limits.

These limits may include such factors as daily operating hours set under a local government planning scheme, the capacity of the equipment process a material, variability of availability of raw products, etc.

For example, where a works producing crushed rock, has plant that is capable of crushing 1 tonne of rock per hour, the maximum capacity that could be crushed, given that there were no design limitations would be—

1t per hr X 24 hrs X 365 days = 8760 tonnes per year.

However, under town planning requirements, the plant can only be used for 7 hours per day, Monday to Friday and is not permitted to stockpile material waiting to be crushed. A further limitation is that rock for crushing is not available from January to March each year.

An administering authority could determine that the design production capacity is limited to—

1 t per hr X 7 hrs X 195 days = 1365 t per year

To remove all doubt, the terms design production capacity, peak design capacity, design capacity are not synonymous with the actual production rate of the activity. The risk to the environment is based on the potential for environmental harm from the activity which in itself is limited by factors such as those suggested above.

The following notes provide some detail to the individual items in this schedule.

Item 1—Aquaculture does not include oyster farming

Holding does not include holding in aquaria for display purposes

Holding includes enclosures within waters and ponds upon land.

Enclosures include, for example, fences and cages

Item 2—Cattle feedlotting includes feeding cattle in confined areas for extended periods to enhance their productivity. Mostly, this is used to produce beef, but it is sometimes used for milk production.

Standard cattle unit is defined in schedule 9.

Item 3—Standard pig unit is defined in schedule 9

Item 4—Poultry farming relates to domestic fowls collectively, and includes chickens, turkeys, guineafowls ducks and geese; it does not refer to farming of flightless birds such as ostriches and emus.

Item 5—Alcohol distilling includes methyl alcohol and ethyl alcohol.

Item 6—Chemical manufacturing, processing or mixing relates to chemicals as defined in schedule 9.

Chemical manufacturing is to produce chemicals by labour or equipment.

Chemical processing is a systematic series of actions directed to producing a chemical product or products as a result of one or more chemical reactions.

Chemical mixing is the combining of ingredient chemicals including dilution with solvents.

Item 7—Chemical storage concerns chemicals as defined in schedule 9, except for the specified exclusions.

Containers refers to individual containers and not the combined storage volume of multiple containers.

The use of a vehicle to transport chemicals does not constitute storage while the vehicle is located on a road or public place.

Item 8—Coke production relates to the production of coke, a product of coal.

Item 9—Gas producing does not include collection of gaseous emissions from naturally occurring hydrocarbon deposits (natural gas), from sewage treatment plants or from decomposition of organic waste in landfills.

Item 10—Water-based paints are those paints in which the principal solvent is water.

Paint manufacturing of water-based product may involve use of toxic materials in water-based solutions, which still require appropriate safeguards to prevent environmental harm. This level 2 category recognises that the risks of waste management of a water-based paint are considerably less than for an equivalent organic solvent-based paint.

Item 11—Storage at service stations and storage for power generators and other fuel burning equipment are ERAs if they store crude oil or petroleum product above the stated thresholds.

Item 12—Oil refining or processing also includes petroleum refining.

Item 13—Fuel gas refining or processing includes mixtures of gases such as LPG.

Item 14—Crematorium may include burning of body parts as well as whole bodies.

Item 15—Sewage treatment works are typically part of municipal sewerage systems, or commercial operations such as resorts and private residential developments, whether operated by a State or local government; under a contract with State or local government; or as a private or commercial activity treating sewage for such activities as resorts or private residential developments.

Sewage treatment works do not include septic tanks, on-site aerobic sewage treatment devices, composting toilets, which individually are less than the threshold peak design capacity.

Sewage treatment works include pump stations and other ancillary works operate by the owner of the works, but do not include privately owned pump stations and other ancillary works discharging into a State or local government operated system. (Such activities are not ERAs in their own right. They can however be controlled to a certain degree under the terms and conditions of local government trade waste permits where they discharge to a local government sewerage system.)

Off site effluent disposal or solid waste disposal from a sewage treatment works is not included in this item once 'ownership' of the effluent or solid waste to transferred to a third party. Such cases may be considered under another item (such as items 53, 75 or 76).

Item 16—Municipal water treatment refers to activities associated with chemical dosing of raw water (from a river or groundwater sources) for the purpose of providing a drinking water service to a town or a local community.

Item 17—Fuel burning - The threshold of 500 kg or more per hour refers to the cumulative capacities of fuel burning equipment for an activity. For example, a hospital may have 4 standby generators, each capable of burning 150kg of fuel per hour. The cumulative capacity is therefore 600kg per hour and a licence is required.

Motor vehicles are not included in determining cumulative fuel burning capacity of an activity.

Burning or flaring off of waste gases is not included in this ERA, but is included in item 76, if the waste gas is a regulated waste.

Item 18—The ERA may include dedicated power generation equipment which consumes fuel at a rate above the threshold rate, even if it is a traditional power station.

This item does not include recovery of waste energy through cogeneration processes.

Item 19—Dredging includes extraction of mud, sand, coral, ballast, shingle, gravel, clay, earth and other material from the bed of tidal, nontidal waters.

A royalty is payable on all dredging spoils that are not dredged for the purpose of maintaining navigable channels and other port facilities.

A port authority includes a port corporation.

Item 20—Extractive industries include activities where the extracted material is ‘won to obtain a source of rock or other material for sale or for the purpose of constructing a civil engineering work such as a dam wall, breakwater or foreshore revetment.

This item does not include convenient extraction of rock or other material as part of a cut and fill operation associated with land forming, highway construction, tunnelling or where the primary purpose is to create a void, such as a dam or an amphitheatre..

This item does not include extraction of ore from an ore body.

Item 21—Mineral exploration or mining includes lawful activities under a mining authority.

Mining authority has the meaning given in schedule 9 of the regulation.

Item 22—Screening materials includes processing of dredge spoil or other extractive material, processed to achieve specific sizes and removal of undesirable impurities.

Item 23—Abrasive blasting includes use of slag, sand, shot in a wet or dry pressure stream.

This item does not include high pressure water, steam or air, unless an abrasive material is included in the pressure stream.

Item 24—Boiler making includes welding, riveting and cutting of metal plate to form structures including trusses, beams, pressure vessels, boats, caissons and similar products.

Civil engineering structures such as welded steel bridges are not included in this ERA, but are included in item 39.

Agricultural equipment includes agricultural vehicles, ploughing equipment, harvesting equipment and other large implements, but does not include hand implements such as chain saws.

Heavy machinery refers to large machines, but does not include hand held tools.

This item does not include hand-held pop-rivet guns or use of welding equipment in isolation.

Electrical machine manufacturing or construction means construction of machines such as power generators, switchgear and electrical drive motors.

Item 25—Metal surface coating does not include application of surface coating by paintbrush.

Item 26—Metal forming includes an activity where metal products are produced by pressing, forging extending, extruding or rolling metal. Examples include production of roof guttering and roofing material.

An activity where metal is formed into plate, wire or rods includes reinforcing steel and fencing wire.

Item 27—Metal recovery includes recovery of metal from items such as car batteries, car bodies.

This item does not include dismantling of electrical equipment (such as computers) to recover metals.

Item 28—Operating a motor vehicle workshop in the course of a commercial enterprise includes maintenance of a fleet of vehicles associated with a business enterprise, such as a car rental company, where the company does not commercially service vehicles not belonging to the company.

A fleet of motor vehicles may include different types of vehicles such as taxis and taxi trucks, various mining and earth moving equipment, etc.

Further definition of the range of activities which are included in this item is provided in schedule 9.

Activities which involve a community service such as Meals on Wheels or Blue Nurses are not included in this item, even if they service their own vehicles in their own workshop, because the community service organisation is nonprofit and not a commercial enterprise..

Fund raising activities such as carwashes undertaken by Scouts, schools or for a similar community purpose are not included in this item, because the scout group or association is not operating the workshop where the car detailing is being carried out.

The definition of a motor vehicle would include ride-on mowers.

Item 29—Beverage production may include bottling or canning of beverages.

Item 30—Edible oil production refers to oils used in manufacture of food products and may include bottling and canning of edible oils.

Item 31—Flour milling as a component activity of ‘boutique bakeries’ is not included in this item.

Item 32—Meat processing does not include meat processing within retail premises such as supermarkets and butcher shops.

This item does not include curing by smoking under item 35.

Item 33—Milk processing includes production of all dairy products in works having a design production capacity exceeding the threshold rate.

Item 34—Seafood processing may include activities undertaken on a vessel in a closed water (such as a bay) or within a marine

protected area, such as Marine Park or Fish Habitat Area, but does not include activities undertaken outside the waters of the State.

Item 35—Smoking, drying and curing, refers to processes used for preserving fish, meat and vegetables etc.

Item 36—Sugar milling may include the cogeneration of power through recovering of excess energy generated through burning of organic mill waste.

Item 37—Bottling or canning means the processes of preserving of food in bottles or cans.

Item 38—Land clearing refers to the clearing of vegetation.

> Schedule 9 provides definitions for clearing, environmentally relevant land and other terms used in relation to this item.
>
> This item does not relate to harvesting of plantations or crops, pruning or other horticultural and silvicultural activities to enhance the growth of vegetation.

Item 39—Constructing does not include maintenance activities on railways, such as replacing rails, ballast, or in the case of roads, road architecture, resurfacing and repairs.

Item 40—Metal foundry means a place where molten metal is poured into mould to shape castings.

> Item 40(c) refers to diecasting of aluminium and alloys of metals, but does not include casting of precious metals to make jewellery.

Item 41—Metal Works means smelting (fusing or melting) of metal ores to produce metal.

Item 42—Mineral Processing means concentration of ores to remove impurities and increase the metal content in the product.

Item 43—Animal housing refers to commercial facilities for housing dogs other than purely for overnight medical treatment.

Item 44—Battery manufacturing includes manufacture of all types of batteries.

Item 45—Crushing, milling or grinding means the processes involved in breaking down material into smaller sized pieces.

Item 46—Mushroom growing substrate manufacture means mixing organic materials to prepare substrate for growing mushrooms.

> Mushroom growers who sell used mushroom substrate are not commercially producing a soil conditioner under item 53.

Item 47—Pet, stock or aquaculture food manufacturing includes activities carried out by a person who processes meat for sale as pet food, but does not include packaging of pet food.

Item 48—Plaster manufacturing includes manufacture of plaster wall and ceiling panels and ornamental plaster castings in works having a design production capacity in excess of the threshold amount.

Item 49—Pulp or paper manufacturing includes pulping of waste paper or card, mixing with organic fibre and manufacture of paper, cardboard and similar products.

Item 50—A rendering operation commonly includes cooking and drying of fatty wastes from abattoirs, cooking oils, animal wastes etc.

Item 51—Plastic manufacturing includes products made from plastic, blown plastic foam and fibre-reinforced plastic products (for example fibre glass products such as motor vehicle body panels, boats, surf boards, building panels).

Item 52—Printing includes use of dyes and inks to produce written or pictorial material.

Item 53—Soil conditioner manufacturing refers to materials (particularly vegetable matter and dung) which are used to build the organic (carbon) content in soils.

> The manufacture of mushroom growing substrate is included in item 46 and not this item

Item 54—Tanning involves processing of green hides into leathers. This item includes tanning of fish and reptile skin as well as hides from mammals.

Item 55—Textile includes any material suitable for, or processed by weaving. This item includes preparatory processes such washing and cleaning plant fibre, dyeing and spinning in mills.

Item 56—Tobacco processing includes treatment with chemical additives and drying.

Item 57—Tyre manufacturing or retreading includes processes such as vulcanising and moulding rubber tyres and tyre treads as well as production of casings.

Item 58—Asbestos products manufacturing includes products containing asbestos fibre.

Item 59—Asphalt manufacturing includes preparation of products containing bitumen and artificially made products from petroleum oils.

Item 60—Cement manufacturing includes preparation of materials from burning of clay and limestone, which are used to bond aggregates into a hard matrix.

Item 61—Clay or ceramic products manufacturing refers to products from a kiln or oven.

Item 62—Concrete batching refers to mixing of cement, sand and water with aggregate to produce concrete. This item may include commercial manufacture of concrete products such as pipes, pavers, concrete building panels and products such as ferro-cement boats.

Item 63—Glass or glass fibre manufacturing refers to manufacture of glass in billets, panels and glass fibre in mats or bats.

> This item does not include application of glass fibre as a reinforcing substance in manufacture of ‘fibre glass’ products. This activity is covered by item 51.

Item 64 —Mineral wool or ceramic fibre manufacturing includes manufacture of insulation bats and mouldings.

Item 65—Motor racing may include a series of events on a circuit as set out in the terms of the environmental authority. The conditions of an environmental authority may for example, allow a person to regularly operate a speedway circuit or a go-cart racing track over a twelve month period.

Item 66—Chemically treating timber includes surface treatment as well as infusion using, for example, pressure to aid penetration.

Item 67—Sawmilling or woodchipping relates to the manufacture of timber products such as rough sawn timber, sized timber, plywood, chipboard, laminated timber, nail-plated timber, veneer laminated timber and other timber products which provide a raw material for the manufacture of wooden products.

Item 68—Wooden product manufacture includes commercial activities such as cabinet making and furniture component manufacture, coffin manufacture, house frame and timber truss manufacture.

Timber boat building is included in this item.

Item 69—Boat maintenance or repair facility includes repairs and maintenance to the hull, superstructure and mechanical components such as the engine and transmission.

A sail maker for example is not included in this item.

The facility may include cradles, dry docks and hardstand areas used for boat repairs, on land, or on or near water.

This item does not include stand alone refuelling facilities.

Item 70—Heliport refers to a facility for landing and take-off operations.

This item may also include a mown grassed area maintained with marking and a wind sock

An emergency helicopter landing site may include any facility which operates under the *Ambulance Services Act 1991*, the *Fire Services Act 1990*, or *the State Counter Disaster Organisation Act 1975*.

Item 71—Port includes any facilities defined to be a port under the *Transport Infrastructure Act 1994.*

Activities carried out in a port may include fuel bunkering (item 11), sewage treatment (item 15), stockpiling, loading and unloading facilities (item 74) or quarantine waste incineration (item 76).

Item 72—Railway facility refers to operations at a place where engines and rolling stock are maintained or repaired *and* refuelled.

Maintenance operations may include cleaning down (degreasing) and servicing by lubrication. Mechanical repairs to the motor, transmission, suspension, wheels, loading and unloading equipment and body repairs, window glass, upholstery and flooring may be carried out under this item.

To make clear, this item includes the storage of fuel necessary for refuelling activities prescribed under this item and therefore a separate environmental authority is not required for the storage of fuel.

Item 73—Marina may include provision of a facility for safe anchorage of boats and associated services such as provisioning and on-shore ablutions.

This item does not include facilities for maintenance or repair of boats (item 69)or storage of fuel (item 11).

Item 74—Stockpiling, loading or unloading goods in bulk refers to operations involving unpackaged goods or cargo such as a cereal grain or a mineral ore.

Item 75—Waste disposal includes landfills for municipal waste and special containment facilities for regulated wastes. Schedule 9 provides a definition for limited regulated waste.

Item 76—Incinerating waste includes operation of a facility designed for incineration of waste.

A facility may include a building, complex of buildings, structures and associated equipment designed for a specific purpose. A facility may include construction of a pit and associated equipment for pit burning.

Biomedical means the biological sciences which relate directly to medicine such as histology and embryology. Biomedical wastes are those wastes generated by these practices and some of these wastes may be infectious wastes.

Quarantine is the strict isolation designed to prevent spread of infectious or contagious disease. Quarantine waste can therefore include infectious waste.

Regulated waste is any waste listed in schedule 7 of the regulation, apart from biomedical or quarantine (potentially infectious) waste.

This item does not include a cogeneration capability.

Item 77—Battery recycling includes recovery of metal plates used in wet cell and dry cell batteries.

Item 78—Chemical or oil recycling includes processes used to separate impurities from chemicals and oils by physical and chemical means such as distillation, flocculation, precipitation or filtration.

This item does not include incineration of regulated waste (item 76).

Item 79—Drum reconditioning includes cleaning of drums by physical and chemical processes, removal of dents and painting.

Item 80—Tyre recycling may include shredding to produce a material used in manufacture of rubber products or playground fill.

Item 81—Recycling or reprocessing regulated waste includes physical or chemical processes to recover useable material from regulated waste.

Use of a organic waste as a stockfeed, soil conditioner, fertiliser (see item 84) or as a raw material for manufacture of another item under this schedule (such as fly ash in concrete or asphalt) is not included in this item.

Item 82—Waste transfer station includes a facility for sorting wastes for recycling or disposal.

Item 83—Regulated waste transport relates to a vehicle authorised under the licence

This item may include a truck, tanker, trailer and semi-trailer, as well as a train, boat and an aircraft.

Item 84—Regulated waste storage does not include the temporary storage while in transit.

Item 85—Regulated waste treatment means treatment to render the regulated waste less or non-hazardous.

Equipment used to separate regulated waste from a waste stream, but which does not reduce the aggregate hazard of the components (such as bag filters, oil separators or interceptors) is not included in this item.

Schedule 2 provides conditions which apply to particular activities involving controlled substances.

Schedule 3 contains a list of activities involving handling or use of controlled substances.

Schedule 4 contains essential use criteria for the installing, buying, keeping or refilling of halon fire extinguishing devices.

Schedule 5 contains a list of industry codes of practice which are referred to in Part 3 (Ozone Depleting Substances) of this regulation.

Schedule 6 prescribes a number of general fees which are payable under the Act. These include fees for transfers of licences, fees for amendments of licences and applications for licences.

It should be noted the application fee for a licence constitutes $200 + an amount equal to the annual licence fee. The $200 is not of itself the application fee.

The annual licences fees which are specific to each environmentally relevant activity are contained in schedule 1.

Schedule 7 contains a list of substances which constitute regulated wastes.

Schedule 8 contains a list of ozone depleting substances. These consist of chloroflourocarbons, halons, hydrochloroflourocarbons and other miscellaneous substances.

Schedule 9 contains specific definitions which are used in the regulation. Some commonly used terms in regulation are not defined here but in schedule 4 of the Act.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Natural Resources.