

Environmental Protection (Regulated Waste) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 154

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Regulated Waste) Amendment Regulation 2018

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

In Queensland the *Environmental Protection Act 1994* (EP Act) and its subordinate legislation, the *Environmental Protection Regulation 2008* (EP Regulation) provide a framework for classifying wastes.

Wastes containing certain hazardous properties are called regulated wastes and are subject to more stringent management requirements, as they may contain contaminants or have properties that present a higher risk to the environment or human health. Schedule 7, Part 1 of the EP Regulation lists 71 regulated waste items. Any waste that is of a type, or contains a constituent of a type of one of these items may potentially be classified as a regulated waste.

This method of classifying regulated waste is problematic as it does not allow the potential risk associated with the specific type or concentration of contaminant(s) present in a waste to be considered. For example, food processing waste and polychlorinated biphenyls, which are a known carcinogen, are both equally classified as regulated waste, despite posing significantly different levels of risk to the environment and human health.

The introduction of a new regulated waste classification framework enables the hazardous properties of a waste to be assessed, so that an appropriate risk-based waste classification category and subsequent regulatory controls can be applied. The new framework is expected to ensure an appropriate level of hazard protection is applied when managing regulated waste,

particularly for low-risk wastes that will no longer be classified as a regulated waste. This is expected to represent a cost saving for managing low-risk wastes.

Public consultation and submissions on a Consultation Regulatory Impact Statement (Consultation RIS) were sought to inform the outcomes of the review. A Decision Regulatory Impact Statement (Decision RIS) describes the outcomes of the consultation process and the changes to the regulated waste classification framework.

Achievement of policy objectives

The objective of the *Environmental Protection (Regulated Waste) Amendment Regulation 2018* (amendment regulation) is to amend the EP Regulation to reform and modernise the regulated waste framework to improve the way that Queensland classifies and manages waste.

The amendment regulation will achieve the policy objective by providing:

1. Improved classification and management of wastes based on up to date scientific values for the protection of the environment and human health;
2. The ability to test and classify low-risk solid or liquid wastes as not-regulated;
3. Reduced regulation and associated management costs for low-risk not-regulated wastes;
4. Greater incentive to treat waste to reduce the level of potential risk and therefore the associated regulated waste classification category;
5. A framework that does not impact on the viability of established industries and encourages capital investment, economic development and employment.

This approach is reasonable and appropriate as it will modernise the regulated waste framework using best-available science for improved protection of the environment and human health. The amendments also benefit key stakeholders, waste generators and the community more broadly.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objectives of the EP Act, which 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 amendment regulation is based on up to date scientific information provided through expert advice for the protection of environmental and human health and will provide a framework for best practice and innovative management of higher risk wastes.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The Consultation RIS provided two options for achieving the policy objective. Option 1 was to maintain the status quo. The second option was to adopt a new rationalised framework with a list of contemporary environmentally relevant activities (ERA) and a risk based regulated waste classification system. Option 2 specifically provided for introducing three risk-based regulated waste categories and a not-regulated category for wastes that were demonstrated to be low risk.

All submissions were in support of option 2 and overall the proposed framework received positive support. Feedback on the Consultation RIS prompted further review by the Department of Environment and Science and the development of an amended option 2 proposing the two category framework in the amendment regulation (Category 1 (highest risk); Category 2 (moderate risk); and Not-regulated/ general waste (lowest risk)).

Although alternative options were considered through the Consultation RIS, the amendment regulation approach is based on up-to-date science and is generally supported by key stakeholders who have been thoroughly consulted about this reform.

Benefits and costs of implementation

The most recent assessment of costs and benefits of this amendment regulation and alternative approaches are listed and discussed in the Decision RIS.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* was considered during the drafting of this regulation and the amendments are consistent with fundamental legislative principles.

Consultation

A Consultation RIS was released on 30 June 2017 proposing two policy options. The Consultation RIS considered the impact of the proposed options on the administering authorities, industry, holders of existing ERA approvals and the community. The Consultation RIS was open for comment for a period of eight weeks.

During July 2017, the former Department of Environment and Heritage Protection held seven workshops with stakeholders to explore the options proposed and give stakeholders an opportunity to share their views on the proposed arrangements.

In response to the Consultation RIS, 36 submissions were received from individual companies, local governments, utility providers as well as industry bodies representing the waste industry, local government and the agricultural and resource sectors. The results of Consultation RIS are discussed in the Decision RIS.

Subsequent targeted consultation on the changes to option 2 was also undertaken with key stakeholders and peak waste industry groups including the Waste Recycling Industry Association of Queensland, the Waste Management Association of Australia and the Local Government Association Queensland.

In accordance with *The Queensland Government Guide to Better Regulation* the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, was consulted during the development of both the Consultation RIS and Decision RIS. OBPR has assessed the Decision RIS and considers it adequately contains a summary of the results of consultation and details what regulatory proposals have been amended following stakeholder responses. OBPR also notes that where a regulatory proposal imposes a cost, that these impacts are clearly presented and discussed. Given this, OBPR considers the Decision RIS is adequate to support the consideration of the proposal.

Notes on provisions

Section 1. Short Title

This section provides for the short title of the amendment regulation.

Section 2. Commencement

This section provides for the regulation to commence on 4 February 2019.

Section 3. Regulation amended

This section provides that this amendment regulation amends the *Environmental Protection Regulation 2008*.

Section 4. Replacement of ch 5, pt 1 (Regulated Waste)

This section provides for the removal of chapter 5, part 1 and its replacement.

Part 1 Categorisation of commercial and industrial waste

Division 1 Regulated waste, category 1 regulated waste and category 2 regulated waste

Section 64 Meaning of *regulated waste*

New section 64 provides the definition of regulated waste and the criteria for determining when a waste is or is not regulated waste.

Regulated waste is defined in this section to be waste that is commercial or industrial waste that is of a type, or contains a constituent of type that is listed in schedule 7, part 1, column 1 of this regulation. A commercial or industrial waste that contains a residue, or a chemical compound containing an element listed in column 1 is also considered to be regulated waste.

This section also sets out criteria that enables commercial and industrial wastes that would otherwise be classified as regulated waste to be classified as not regulated. Not regulated wastes are deemed to be the same as general wastes.

However, a commercial or industrial waste is not a regulated waste if it is of a type mentioned in schedule 7, part 3, division 1.

Subsection (4) sets out that a commercial or industrial waste is not a regulated waste if testing of the waste material has been undertaken and the testing results in accordance with the Division 2 Testing waste provisions of this regulation. This provision enables solid waste or liquid waste to be classified as not regulated if sampling and analysis results demonstrate that the waste does not present certain attributes.

Division 2 of this regulation describes the criteria for taking samples and testing waste and requires that a waste must be tested for each relevant substance that could be reasonably be expected to be present in the waste.

Relevant substance is defined in schedule 12, part 2 of this regulation.

Section 64A Meaning of *category 1 regulated waste* and *category 2 regulated waste*

New section 64A provides the criteria for determining when regulated waste is category 1 or category 2 regulated waste.

Commercial or industrial waste that has not been determined to be not regulated waste under section 64 must be categorised as category 1 or category 2 regulated waste. This section states the two categorisation methods used to determine if regulated waste is category 1 or category 2 regulated waste.

The most straightforward method to determine the category of a regulated waste is to use a default waste category. This categorisation method requires the waste generator to determine the waste type(s) listed in Schedule 7, part 1, column 1 that most closely describes or matches their waste. For each column 1 waste type the corresponding column 2 value determines if the regulated waste is category 1 or category 2 regulated waste. If more than one column 1 waste type may be relevant for the waste, the waste type that has the highest risk category should be selected. This method of categorisation is used for determining the default waste category for solid and liquid wastes.

Alternatively, a waste generator may categorise solid waste by testing the waste for relevant substances and comparing the test results against the categorisation thresholds provided in part 2 of this regulation. Column 1 of part 2 provides a list of substances and column 2 lists the corresponding threshold value for each substance. If the test results for one or more of the relevant substances are greater than the column 2 threshold value, or if the waste has a pH less than 2 or greater than 12.5, the solid waste is category 1 regulated waste.

If the solid wastes test results for all relevant substances are equal to or below the column 2 threshold value and the pH is between 2 and 12.5, the waste is category 2 regulated waste. If however the test results for the relevant substances and relevant attributes meet the not regulated categorisation threshold values specified for solid waste in new section 64 the waste is not regulated.

Category 1 and category 2 regulated waste categorisation thresholds for liquid tested waste are not provided. All liquid wastes, other than those demonstrated to be not regulated under section 64, will be classified as category 1 regulated or category 2 regulated waste determined by the default categorisation in schedule 7, part 1 for that waste type.

Division 2 Testing waste

Section 64B Purpose of division

New section 64B provides the waste sampling and testing requirements that must be undertaken by waste generators who elect to use the sampling and testing method to determine if their waste is not regulated waste or category 1 or 2 regulated waste.

Section 64C Taking samples

New section 64C specifies that a sample for the testing of commercial or industrial waste must be taken by an appropriately qualified person and under a protocol.

Section 579B of the *Environmental Protection Act 1994* allows a protocol to be published by the department. A protocol describes a procedure that is to be followed in certain circumstances, such as a taking samples, performing analysis on samples and reporting of the results or interpretation of the analysis.

Section 64D Testing samples

New section 64D specifies that samples must be tested by an appropriately qualified person, under a protocol for each relevant attribute and relevant substance.

Waste only needs be tested for relevant attributes or substances that are likely to be present in the waste, as determined by an appropriately qualified person. This approach minimises the costs associated with categorising waste by not requiring testing for attributes or substances that are not likely to be present in a waste.

Relevant attribute and relevant substance are defined in schedule 12, part 2 of this regulation.

Section 64E Retesting of waste

New section 64E provides the ability for an authorised person, who reasonably suspects that a tested waste may be incorrectly classified, to request the person who generated the waste to retest the waste.

A retest may only be requested if retesting of the waste would be expected to result in general waste becoming regulated waste or category 2 regulated waste becoming category 1 regulated waste.

This section does not give an authorised person absolute discretion to request a retest and the request must be based on reasonable grounds or evidence.

Section 64F Results of testing

New section 64F states the timeframe that waste testing results remain valid and the circumstances that would require a tested waste to be retested at an earlier date.

For wastes that are generated from the same processes and input materials the results of waste testing are valid for a period of three months from the testing report date. In this situation the test results will remain current and can be used for all further waste loads that are generated in that period. This approach reduces the number of ongoing waste tests required and the associated costs to waste generators in circumstances where the quality of each waste load is not expected to change.

If however a change occurs in the process or materials used to produce the waste and the change could be reasonably expected to change the quality of the waste generated the test results will cease to be current and the waste must be retested. The results of the retest then become the current test results.

Waste testing results will also cease to be current if a request is made to retest the waste by an authorised person under new section 64E.

For wastes that are not generated from the same processes or input materials, or that are expected to be of variable quality, testing must be undertaken for each waste load.

A waste generator may at any time elect to categorise their waste without undertaking sampling and testing by determining a default waste category for the waste in accordance with new section 64A and schedule 7, part 1.

Section 64G Offence relating to sampling and testing

New section 64G creates offences for persons that wilfully tamper with, interfere with or otherwise jeopardise the accuracy of testing results.

Wilfully is defined in schedule 4 of the *Environmental Protection Act 1994*

Division 3 Notification, reporting and record keeping

Section 64H Definitions for division

New section 64H contains definitions for certain words and phrases used in this division.

Section 64I Generator must notify and report changes

New section 64I creates requirements for a waste generator to notify or provide a report to the administering authority under certain circumstances. This requirement ensures that where a waste is retested and discovered to have changed to a higher risk waste category, notification is provided to the administering authority within 24 hours.

Following the initial notification the generator must provide a report within ten business days to the administering authority. The report must include the results of any further testing, any corrective actions that have been taken by the generator and the details of any waste that was transported at the time of the change.

The notification and reporting requirements are to ensure that the administering authority can investigate and undertake further action if required.

A notice or report given by the generator under this section is not admissible in evidence against the generator, however, any other evidence obtained because of the notice or report may be used in any legal proceeding against the generator.

It is an offence for the generator if they do not comply with the notification requirements.

Section 64J Generator must keep records

New section 64J creates requirements for the waste generator to keep records of all loads of tested waste that are transported to a receiver. The record must include the prescribed information, be in the approved form and be kept by the generator for at least 5 years.

The prescribed information must also be given to the receiver on or prior to delivery of a load of waste.

It is an offence for the generator if they do not comply with the record keeping requirements.

Generator, prescribed information and receiver are defined in new section 64H.

Section 65 Receiver must keep records

New section 65 creates requirements for a receiver to keep a record of the prescribed information for each load of tested waste received from a generator for at least 5 years.

This section also requires the receiver to notify the administering authority within 24 hours if they become aware of an omission or inaccuracy in the prescribed information provided by the waste generator. This requirement is to ensure that any inaccuracies, deliberate or otherwise, in the information provided by the waste generator are reported to the administering authority so that further investigation and actions may be undertaken if required.

It is an offence for the receiver if they do not comply with the notification or record keeping requirements.

Section 5. Replacement of sch 7 (Regulated waste and waste that is not regulated waste)

This section provides for the removal of schedule 7 and replacement with a new schedule 7.

Schedule 7 Regulated waste and waste that is not regulated waste

The new schedule 7 provides the criteria used for determining if a commercial or industrial waste is not-regulated waste or category 1 or 2 regulated waste.

Part 1 Types of regulated waste and default categorisation

New part 1 sets out the list of default waste categories for solid and liquid waste.

