

Antarctic Treaty (Environment Protection) (Waste Management) Regulations 1994 No. 36

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 36

ISSUED BY THE AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT, SPORT AND TERRITORIES

ANTARCTIC TREATY (ENVIRONMENT PROTECTION) ACT 1980

ANTARCTIC TREATY (ENVIRONMENT PROTECTION) (WASTE MANAGEMENT) REGULATIONS

Paragraph 29(1)(a) of the *Antarctic Treaty (Environment Protection) Act 1980* empowers the Governor-General to make regulations not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary and convenient to be prescribed for carrying out or giving effect to the Act. In addition, paragraph 29(1)(d) of the Act specifically provides for the making of regulations providing for the management and disposal of waste in the Antarctic, or the removal of waste from the Antarctic. Other specific regulation making powers are: paragraph 29(2)(c) which provides for regulating or prohibiting the pollution of soil, air, water or ice where such pollution is, or is likely to be, harmful to the fauna, flora and environment of the Antarctic; paragraph 29(2)(g) which provides for the control and destruction in the Antarctic of non-indigenous animals, plants, viruses, bacteria, yeasts and fungi; and paragraph 29(2)(h) which provides for the prevention of the introduction of diseases and parasites into the Antarctic.

The Regulations primarily implement the obligations arising from Annex III to the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol). Annex III relates to waste disposal and waste management and is primarily concerned with managing waste generated on a day to day basis on the stations. It seeks to address the problems that station waste has caused in the past. Treaty parties were particularly concerned with practices such as dumping waste in the sea close to stations, damaging the particularly sensitive ice free areas around stations and the problems posed by disposing of waste that is particularly harmful to the environment in cases where proper facilities do not exist for disposal of such waste. Broadly, the Regulations provide for:

- the planning of activities to minimise and recycle waste;
- compulsory removal of certain waste from the Antarctic;
- the disposal of sewage and domestic liquid waste; and
- the cleaning up of abandoned work sites and waste disposal sites.

The proposed Regulations will commence on gazettal.

Details of the Regulations are as follows:

PART I - PRELIMINARY

Regulation 1 - Citation

This regulation provides for the Regulations to be cited as the Antarctic Treaty (Environment Protection) (Waste Management) Regulations.

Regulation 2 - Objects of the Regulations

This regulation provides that the objects of the Regulations are to assist in implementing Australia's obligations under Annex III (Waste Disposal and Waste Management) to the Madrid Protocol (the Protocol). The Annex applies to activities for which advance notice to other Treaty parties is required under the Antarctic Treaty. However, there may be activities for which advance notice is not required, including activities in the Australian Antarctic Territory of other countries which are not party to the Treaty. The Regulations therefore provide for waste management in connection with activities to which the Annex itself does not apply.

Regulation 3 - Interpretation

To facilitate drafting, this regulation defines a number of terms used in the Regulations:

'Act' is defined to facilitate reference to the *Antarctic Treaty (Environment Protection) Act 1980*.

'authorised person' is defined to mean a person authorised by the Minister by notice in the *Gazette* for the purpose of the provision in which the expression occurs. This will enable the Minister to authorise another person to, for example, receive reports on her or his behalf, in order to facilitate the efficient administration of the Regulations.

'clean up' means to remove or dispose of waste and any structure on a site.

'Committee' means the Committee for Environmental Protection which is provided for under Article 11 of the Protocol. The functions of the Committee (under Article 12) are to provide advice and formulate recommendations for consideration at Treaty meetings, regarding the implementation of the Protocol, and other functions assigned to it by such meetings.

'generate' means to generate waste in the Antarctic (paragraph (a)). It also means to import into the Antarctic, waste or an article, animal, plant, bacterium, virus, yeast or fungus from which waste is generated by a natural process, a mechanical process or a process involving human activity (paragraph (b)). This definition ensures that all means by which waste may be formed, whether brought to the Antarctic in its present form or generated there, are covered by the Regulations. The reference to imported waste is waste that for various purposes may end up in the Antarctic, such as waste which a ship has picked up en route, for example, at one of the sub-Antarctic islands of Macquarie Island or Heard Island. Although such waste would normally stay on the ship for return to Australia, this definition ensures that the waste is dealt with in accordance with these Regulations.

'generator' means the person or organisation responsible for generating waste. This regulation ensures that responsibility for managing (a defined term) waste rests with the person or organisation which generated the waste. Provision is also made to allow another person or organisation to manage the waste on behalf of another person, in which case the responsibility is joint.

'glacier ice' means any ice in, or originating from a glacier. The definition would include an ice sheet, an ice cap, an ice shelf and an iceberg. Sea ice is not covered by this definition as it is formed from the freezing of sea water.

'ice-free area' means land that is not permanently covered by ice. It therefore includes areas covered by snow or ice for only part of the year. The definition excludes the sea.

'ice-pit' is defined widely to include any naturally occurring hole or pit in glacier ice, such as a crevasse, and also includes a constructed hole or pit.

'manage' includes to store, dispose of, and remove waste.

'remove' means remove from the Antarctic. This ensures that any reference to the removal of waste refers to its removal from the area of south of 60 degrees S.

PART 2 - WASTE MANAGEMENT

Division 1 - Planning and conducting waste management

Regulation 4 - Planning and conduct of waste minimisation and management

Paragraph (a) requires a person planning or carrying on an activity in the Antarctic to incorporate in the planning, measures to minimise the amount of waste that will be generated and to take into account measures for recycling waste as well as providing for its safe storage, removal and disposal.

Paragraph (b) requires that in planning the activity all reasonable measures have to be taken to avoid the use of poly-vinyl chloride products.

Paragraph (c) stipulates that in carrying out the activity all reasonable steps have to be taken to minimise the amount of waste generated or disposed of in the Antarctic.

Division 2 - Storage of waste

Regulation 5 - How must waste be stored?

This regulation provides that a person must take all reasonable steps to ensure that waste is stored in such a way that prevents its dispersal into the environment before its removal or disposal. Secure storage of waste in the Antarctic is vital given the severe weather conditions, which can result in dispersal of inadequately secured waste.

Contravention of this provision attracts a penalty of 20 penalty units.

Division 3 - Removal of waste

Regulation 6 - Waste that must be removed

Regulation 6 lists the types of waste which must be removed as soon as practicable from the Antarctic. The types of waste specified are all potentially harmful to the environment and there are no adequate means of disposal in the Antarctic.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 7 - Solid, non-combustible waste

Regulation 7 requires all solid, non-combustible waste to be removed unless the Minister decides under Part 3 of the Act (environmental impact assessment) that its removal would have a greater environmental impact than leaving the waste in position. An example of such waste is an empty fuel drum. If there is no intention to use it again it must be removed unless the Minister has authorised otherwise under an environmental impact assessment.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 8 - Liquid waste

Regulation 8 requires a person to take all reasonable steps to remove liquid waste as soon as is practicable. This regulation does not apply to sewage or domestic liquid waste as these are provided for in Division 6 (regulations 17 and 18). Nor does the regulation apply to those liquid wastes which are identified in regulation 6 as wastes which must be removed.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 9 - Waste that must be removed unless sterilised or incinerated

Regulation 9 provides that certain wastes must be removed, sterilised or incinerated as soon as is practicable. These are the residue of a carcass of an imported animal, a laboratory culture of a micro-organism or plant pathogen, or an introduced avian product. Such wastes have the potential to cause disease to the fauna and flora.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 10 - Destination of waste removed

This regulation provides that when waste is taken to the country where the expedition was planned, or to another country in which arrangements have been made for disposal of the waste in accordance with international agreements relating to that kind of waste, then these Regulations will have been complied with. This provision implements Article 1.4 which was included in Annex III to deter expeditions from disposing of their waste in a country close to the Antarctic without first coming to an agreement with that country. Such an agreement has to be consistent with any relevant international agreement relating to the kind of waste involved. In most cases, expeditions to the Australian Antarctic Territory (AAT) will have been

organised in Australia and will return their waste to Australia, so the regulation applies primarily to foreign expeditions to the AAT.

Regulation 11 - Waste generated at a field camp

Regulation 11 provides that a person who generates waste at a field camp must take all reasonable steps to take the waste back to the station or ship from which the field camp is supported.

The regulation also allows arrangements to be made with another party to the Protocol for the removal of the waste to another station or ship including outside the AAT. In this case the obligation is to manage the waste in accordance with Annex III to the Protocol.

Contravention of this provision attracts a penalty of 20 penalty units.

Division 4 - Disposal of waste by incineration

Regulation 12 - When and how must waste be incinerated?

Subregulation (1) defines 'combustible waste' for the purposes of this regulation as not including combustible waste that is required by regulation 6 (certain toxic and solid noncombustible wastes) to be removed, or combustible waste described in subregulation 19(2) (certain historic waste).

Subregulation (2) provides that combustible waste that is not removed or recycled must be burnt in an incinerator that minimises harmful emissions and is designed and operated in a way that takes into account emission and equipment standards or guidelines recommended or set by various bodies. These bodies are the Committee for Environmental Protection (to be established under the Protocol), the Scientific Committee on Antarctic Research, the Commonwealth or government of the Australian Capital Territory.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 13 - Prohibition of open burning of waste

This regulation prohibits the burning of waste in an open fire.

Contravention of this provision attracts a penalty of 20 penalty units.

Division 5 - Limits on disposal of waste on land

Regulation 14 - Prohibition on disposal of waste in ice-free areas or fresh water

Regulation 14 prohibits the disposal of any type of waste onto an ice-free area or into a fresh water system. These areas are environmentally sensitive areas.

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 15 - Conditional prohibition on disposal of waste on ice

Regulation 15 prohibits the disposal of waste onto sea ice or the glacier ice (a defined term) unless such disposal is permitted in the circumstances specified in regulation 16 or in subregulation 18(2) (see notes on these regulations).

Contravention of this provision attracts a penalty of 20 penalty units.

Regulation 16 - When may waste be disposed of on ice?

Subregulation 16(1) applies to non-combustible waste that is generated at an inland station or a field camp. This regulation recognises that it is not always possible to remove waste from such a location. However, in providing for waste to be disposed of there, no exception is made for waste that is required, under Division 3, to be removed, sterilised or incinerated.

Subregulation 16(2) provides that such waste may be disposed of in an ice pit if it is not reasonably practicable for it to be disposed of in accordance with other regulations in Part 2.

Subregulation 16(3) provides that a person disposing of waste in an ice pit must ensure that the waste in the pit is below the top of the ice immediately around the pit (paragraph (a)). A person must also ensure that an ice pit is not on an ice-flow line if he or, she knows it to terminate at an ice-free area or an area in which waste may become exposed later (paragraph (b)).

Contravention of this provision attracts a penalty of 20 penalty units.

Division 6 - Disposal of sewage and domestic liquid waste into the sea

Regulation 17 - When may sewage or domestic liquid waste be disposed of into the sea?

Subregulation 17(1) provides that sewage or domestic liquid waste may be disposed of directly into the sea if all reasonable steps are taken to discharge it where conditions exist for initial dilution and rapid dispersal of the sewage or waste. The sewage or waste must be macerated before disposal if the station has an average weekly occupancy of 30 or more people during the summer.

Contravention of this provision attracts a penalty of 20 penalty units.

Subregulation 17(2) provides that subregulation (1) does not apply to the disposal of sewage from a ship. The Protocol provides separately for ships and this has been implemented by way of amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. These provisions will not commence until the Protocol enters into force.

Regulation 18 - Disposal of by-product of sewage treatment

Subregulation 18(1) provides that the by-product of treatment of sewage by the rotating biological contactor process or a similar process may be discharged into the sea if such disposal does not adversely affect the local environment and, if required, takes place in

accordance with a permit under the *Environment Protection (Sea Dumping) Act 1981*. Such a permit may be necessary if the by-product was to be taken out to sea by a boat or aircraft.

Subregulation 18(2) allows the by-product to be placed on the sea ice so that it falls into the sea when the ice melts. This will allow disposal into the sea at times when the surface of the sea is frozen. However, it will still be necessary to comply with the conditions set out in subregulation 18(1).

Division 7 - Cleaning up

Regulation 19 - Cleaning up waste disposal sites and abandoned work sites

Subregulation 19(1) places an obligation on a person who uses a waste disposal site or a work site in the Antarctic and subsequently abandons it to clean up (a defined term) the site. This requirement is subject to the exceptions specified in subregulations 19(2) and 19(3).

Contravention of this provision attracts a penalty of 20 penalty units.

Subregulation 19(2) provides that a person must not take from a waste disposal site or a work site that is being abandoned: a structure which has been designated as an historic site or monument; a structure that is entered on the Register of the National Estate or on the Interim List kept under the *Australian Heritage Commission Act 1975*; or, waste or a structure if the Minister decides under Part 3 of the Act (environmental impact assessment) that its removal would cause greater adverse environmental impact than leaving it in place.

Subregulation (3) provides that subregulation (1) does not require a site to be cleaned up prior to an assessment being made of the historical value of any material or structure on the site.

PART 3 - COMPLIANCE WITH WASTE MANAGEMENT REQUIREMENTS

Regulation 20 - Non-compliance with Part 2 in certain circumstances

Subregulation 20(1) reflects Article 12 of Annex III, and provides that the requirements of Part 2 do not apply when an activity is being carried on in order to save a person from death or serious injury, or to secure the safety of a ship, aircraft, or equipment or facilities of high value, or to protect the environment.

Subregulation 20(2) provides that a person need not comply with Part 2 if equipment that is being used to manage waste is unintentionally damaged and all reasonable precautions are taken to minimise the impact to the environment after the occurrence of the damage.

Regulation 21 - Notification of non-compliance with Part 2

Subregulation 21(1) provides that where a person has contravened a requirement of Part 2 due to an emergency or if equipment has been unintentionally damaged, he or she must notify the Minister of the contravention in writing within 30 days of starting the activity or the occurrence of the damage (as the case may be). If the person has a reasonable excuse, for example, that communication was not possible, this notification does not have to be

made in the 30 days. (Section 4K of the Crimes Act 1914 provides that the obligation to do that act or thing continues, notwithstanding that the period has expired, until the act or thing is done.)

A penalty of 2 penalty units for each day on which the offence continues.

Subregulation 21(2) provides that within a further 30 days the person must then provide a written report which sets out the requirement that was contravened, describe how it was contravened, and explain why the requirement was contravened.

A penalty of 2 penalty units for each day on which the offence continues.

The intention of this regulation is, amongst other things, to enable compliance with Article 12 of Annex III to the Protocol which requires that information on activities undertaken in emergencies is circulated to all signatories to the Protocol and to the Committee (once established) and that a full explanation is provided.