

Western Australia

**Environmental Protection (NEPM - UPM)
Regulations 2003**

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Environmental Protection (NEPM - UPM) Regulations 2003

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Environmental Protection (NEPM - UPM) Regulations 2003

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Environmental Protection (NEPM - UPM) Regulations 2003*.

2. Interpretation

(1) In these regulations —

“Agreement” has the same meaning as it has in section 6(1) of the *National Environment Protection Council (Western Australia) Act 1996*;

“brand owner” means a person who —

- (a) for a product other than an imported product — owns, or is the licensee of, a trade mark under which the product is sold whether or not the trade mark is registered;
- (b) for an imported product — imports the product; or
- (c) for in-store packaging — supplies the packaging for use as primary packaging;

“consumer packaging” means packages made of any material, or combination of materials, for the containment, protection, marketing, or handling of retail consumer products;

“Covenant” means the agreement of 2 July 1999 called The National Packaging Covenant and referred to in the NEPM-UPM;

“industry” means any manufacturing, industrial, commercial, wholesale, or retail activity or process that can result in the generation, recycling, treatment, transport, storage, or disposal of waste;

“in-store packaging” means packaging, of any material, supplied to a consumer at the point of sale of a product for the containment, protection, handling, or carriage of the product;

Examples of “in-store packaging” —

1. Plastic or paper carry bags.
2. Take-away food containers.

“kerbside recycling collection service” means a domestic waste collection service by which domestic solid waste is collected from the roadside for recycling;

“NEPM-UPM” means the NEPM cited as the *National Environmental Protection (Used Packaging Materials) Measure*;

“owner’s packaging” means consumer packaging in which a brand owner’s products are sold;

“recovery rate” means the rate at which the brand owner’s consumer packaging material is recovered using the equation —

$$R = \frac{WR}{WS} \times 100 \%$$

where —

“*R*” means the recovery rate;

“*WR*” means the weight of the brand owner’s consumer packaging material recovered;

“*WS*” means the weight of the brand owner’s consumer packaging material sold in Australia;

“recyclable”, in relation to packaging for a product, means reasonably able to be recovered in Australia through a collection or drop-off system, and able to be reprocessed and used as a raw material for the manufacture of another product;

“recycled”, for a product, means the product is recovered and used as a raw material to produce another product;

“Signatory” means —

- (a) a signatory to the Covenant; or
 - (b) a person who accedes to the Covenant after the Covenant is made.
- (2) In these regulations, unless the contrary intention appears, words and expressions have the same meanings as in clause 3 of the NEPM-UPM.
- (3) Examples and notes in these regulations are provided to assist understanding and do not form part of these regulations.

3. Purpose

The purpose of these regulations is to require certain acts to be done for the purpose of implementing the NEPM-UPM.

Part 2 — Responsibilities of brand owners

Division 1 — Application

4. Application of this Part

(1) In this regulation —

“notional market share” means the estimated value of the State’s share of annual sales, in Australia, of products similar in nature to the brand owner’s products worked out using the equation —

$$NM = A \times \frac{PW}{PA}$$

where —

“A” means the value of annual sales, in Australia, of products similar in nature to the brand owner’s products;

“NM” means the notional market share;

“PA” means the population of Australia;

“PW” means the population of this State.

Example of how to work out the value of a brand owner’s annual sales of the brand owner’s products as a percentage of the notional market share —

If the population of the State is 3 million and the population of Australia is 18 million, and, for a particular brand owner, the value of annual sales of the brand owner’s products is \$500 000 and the value, in Australia, of annual sales of products similar in nature to the brand owner’s products is \$120m, then —

$$NM = \$120 \text{ m} \times \frac{3}{18}$$
$$= \$20\text{m}$$

1% of \$20m = \$200 000.

Because the value of annual sales of the brand owner’s products is \$500 000, the value of the annual sales is 2.5% of the notional market share.

(2) This Part applies to a brand owner other than a brand owner who —

(a) is a Signatory and complies with the Covenant; or

- (b) is not a Signatory but to whom the Chief Executive Officer has given an exemption in writing because he or she is satisfied that the brand owner —
 - (i) has a recovery rate, either alone or with others, that is at least equivalent to the recovery rate of Signatories in the same industry or sector as the brand owner; or
 - (ii) carries on business only in this State and the value of annual sales of the brand owner's products is no more than 1% of the notional market share.
- (3) An exemption given under subregulation (2)(b) may be revoked by the Chief Executive Officer if he or she is satisfied that the brand owner no longer meets the criteria referred to in subregulation (2)(b).

Division 2 — Action plans

5. Action plans

- (1) A brand owner to which this Part applies must prepare and submit to the Chief Executive Officer an action plan —
 - (a) within 12 months of the commencement of these regulations or within 12 months of becoming a brand owner to which this Part applies, whichever is the later; or
 - (b) within 2 months of being required under regulation 7 to prepare and submit an action plan.

Penalty: \$5 000.

- (2) A person who commits an offence under subregulation (1) is guilty of a separate and further offence in respect of each month after the day of conviction during which the failure to prepare and submit an action plan continues and is liable in respect of each separate and further offence to a penalty of \$5 000.
- (3) The action plan must contain the following information —

- (a) how the brand owner intends to ensure that the owner's packaging, or used consumer packaging that is substantially similar to the owner's packaging, is —
 - (i) recovered; and
 - (ii) reused, recycled, or used for energy recovery;
- (b) the quantity of each type of consumer packaging to be —
 - (i) recovered; and
 - (ii) reused, recycled, or used for energy recovery;
- (c) how the brand owner intends to inform the public of the way in which the consumer packaging may be recovered.

Penalty: \$5 000.

- (4) The quantity referred to in subregulation (3)(b) must be at least equivalent to the levels of recovery and reuse, recycling, or use for energy recovery achieved by Signatories.
- (5) A brand owner to which this Part applies must —
 - (a) maintain and implement an action plan; and
 - (b) comply with the plan.

Penalty: \$5 000.

6. Approval of action plans

- (1) If a person submits to the Chief Executive Officer an action plan under regulation 5, the Chief Executive Officer may —
 - (a) require that further particulars be supplied in relation to the action plan;
 - (b) approve the plan; or
 - (c) reject the plan.
- (2) If an action plan is rejected, the Chief Executive Officer is to give the person who submitted it written notice of the rejection.

7. Annual review of action plans

- (1) The Chief Executive Officer may review an approved action plan annually and cancel the action plan.
- (2) If an action plan is cancelled, the Chief Executive Officer is to give the brand owner written notice of the decision to cancel it and may by the written notice require the brand owner to prepare and submit to him or her, within the time specified in the notice, an action plan for approval.

Division 3 — Record keeping

8. Brand owner to keep information

- (1) A brand owner to which this Part applies must, for each financial year, keep the following information for each material used by the brand owner as consumer packaging material in the year —
 - (a) the total weight of material used by material type;
 - (b) the number of units of consumer packaging by unit and material type;
 - (c) the total weight of material recovered by material type;
 - (d) the total weight of recovered material reused or recycled in Australia by material type;
 - (e) the total weight of recovered material reused or recycled by material type through export;
 - (f) total kilojoules of embedded energy recovered;
 - (g) total weight of recovered material disposed of to landfill; and
 - (h) how consumers have been advised as to how packaging is to be recovered.

Penalty: \$5 000.

- (2) A brand owner must, within 14 days of being requested to do so by the Chief Executive Officer, allow an authorised person to inspect information required to be kept under subregulation (1).
Penalty: \$5 000.

Division 4 — Compliance notice

9. Authorised person may give notice to comply

- (1) If an authorised person believes on reasonable grounds that a brand owner has contravened regulation 5 or 8, the authorised person may give the brand owner a written notice under this regulation.
- (2) The notice must state —
- (a) the act or omission comprising the contravention;
 - (b) the action the brand owner may take to rectify the alleged contravention; and
 - (c) the day by which the brand owner must take the action.
- (3) A brand owner must comply with the notice unless the brand owner has a reasonable excuse for not complying with it.
Penalty: \$5 000.
- (4) A brand owner cannot be prosecuted for an alleged contravention of regulation 5 or 8 unless the brand owner —
- (a) is given a notice under subregulation (1); and
 - (b) does not comply with the notice.

Part 3 — Operators of kerbside recycling collection services to give information to Chief Executive Officer

10. Local governments

(1) In this regulation —

“household”, for a kerbside recycling collection service, includes residential premises and non-residential premises supplied with a container for the collection of recyclable material by the operator of the service;

“participation rate”, for a kerbside recycling collection service, means the number of households participating in the service, expressed as a percentage of the number of households to which the service is provided;

“recyclable material” means material reasonably able to be recovered, reprocessed, and used as raw material.

(2) This regulation applies to a local government if it operates a kerbside recycling collection service within its local government area.

(3) The local government must, within 3 months after the end of each financial year in which the service operates, give to the Chief Executive Officer the following information relating to its area for the year —

- (a) what percentage of households is covered by the service;
- (b) the participation rate for the service;
- (c) the number of households covered by the service and whether the households are residential or non-residential;
- (d) the fee charged to each household for the service;
- (e) the total weight of recyclable material collected at kerbside by material type; and

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- (f) if the material collected is sorted —
 - (i) the total weight of each material type sold or sent for secondary use, including energy recovery; and
 - (ii) the total weight of the residual fraction of each material type disposed of to landfill.

11. Other operators

- (1) This regulation applies to a person, other than a local government, if the person operates a kerbside recycling collection service in a local government district.
- (2) A person to whom this regulation applies must, within 3 months after the end of each financial year in which the service operates, give the Chief Executive Officer the information mentioned in regulation 10(3)(c), and (d) to (f) in relation to the local government district.

Penalty: \$5 000.

Part 4 — Appeals

12. Appeals

- (1) A brand owner aggrieved by —
 - (a) the rejection of an action plan under regulation 6; or
 - (b) a decision of the Chief Executive Officer under regulation 7(1),

may, within 21 days after the day on which the person is given notice of the decision, lodge with the Minister an appeal in writing setting out the grounds of the appeal.

- (2) An appeal lodged under subregulation (1) is to be treated as if it were an appeal under section 102 of the Act, and for that purpose sections 102 and 106 to 110 of the Act apply as if the appeal were an appeal under section 102.

Part 5 — Expiry

13. Expiry

These regulations expire on 1 July 2004 ².

Part 6 — Amendment of the Environmental Protection Regulations 1987

14. The regulations amended

The amendment in this Part is to the *Environmental Protection Regulations 1987**.

[* *Reprinted 29 November 2002.*

For amendments to 11 March 2003 see Gazette 20 December 2002.]

15. Schedule 6 amended

Schedule 6 is amended after item 14 of the entry relating to the *Environmental Protection (Rural Landfill) Regulations 2002* by inserting the following —

“

***Environmental Protection
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1. regulation 5(1)(a)	250	500
2. regulation 5(1)(b)	250	500
3. regulation 8(1)	250	500
4. regulation 8(2)	250	500

”

Notes

- ¹ This is a compilation of the *Environmental Protection (NEPM - UPM) Regulations 2003* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Environmental Protection (NEPM - UPM) Regulations 2003</i>	23 Jul 2003 p. 3157-73	23 Jul 2003

- ² The amendment in the *Environmental Protection (NEPM - UPM) Amendment Regulations 2004* published 9 Jul 2004 p. 2771 has no effect because the regulations it sought to amend expired on 1 Jul 2004 before the purported amendment was published (on 9 Jul 2004).