



MINISTRY of TRANSPORT
TE MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 386 of the Maritime Transport Act 1994

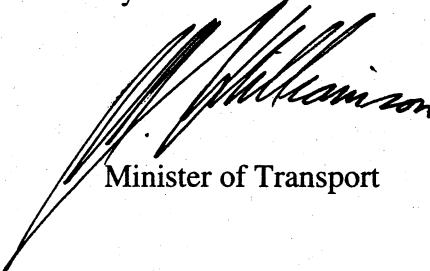
I, MAURICE DONALD WILLIAMSON, Minister of Transport,

HEREBY MAKE the following marine protection rules.

SIGNED AT Wellington

This 28 day of June 1998

by MAURICE DONALD WILLIAMSON


Minister of Transport

Marine Protection Rules

Part 180

Dumping of Waste or Other Matter

Maritime Transport Act 1994

Marine Protection Rules

PART 180

DUMPING OF WASTE OR OTHER MATTER

Marine Protection Rules

PART 180—DUMPING OF WASTE OR OTHER MATTER

PART OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

Objective

Part 180 incorporates a number of the standards and processes that are required in New Zealand law to enable New Zealand to become party to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 (London Convention), and to comply with the provisions of the 1996 Protocol to the London Convention, once these take effect in New Zealand.

Part 180 of the marine protection rules operates within the framework established by Part XXI of the Maritime Transport Act 1994. Part XXI establishes the application and enforcement provisions for the standards and processes set out in the London Convention. Part 180 details the specifics of the permitting regime to control ocean dumping and minimise its environmental effects.

The authority for making Part 180 is found in sections 386 and 389(1) of the Maritime Transport Act 1994.

Extent of Consultation

On 25 October 1997 the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 180. A notice was also published in the *New Zealand Gazette* on 23 October 1997. The Authority then made its Invitation to Comment paper, draft Part 180 and draft *New Zealand Guidelines for Sea Disposal of Waste* available to the public with 179 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 24 December 1997.

Six submissions were received on Part 180. All submissions and any verbal comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made.

Commencement

Part 180 as amended was referred to and signed by the Minister of Transport.

Part 180 comes into force 28 days after the date of its notification in the *New Zealand Gazette*.

Marine Protection Rules

PART 180

DUMPING OF WASTE OR OTHER MATTER

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General

180.1 Entry into Force

Part 180 shall come into force on the 28th day after the date of its notification in the *Gazette*.

180.2 Definitions

In Part 180—

“Act” means the Maritime Transport Act 1994:

“Convention state” means a state that is a party to the London Convention:

“Director” means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994:

“Dumping” means,—

- (a) in relation to waste or other matter, its deliberate disposal; and
- (b) in relation to a ship, an aircraft, or an offshore installation, its deliberate disposal or abandonment;—

but does not include the disposal of waste or other matter incidental to, or derived from, the normal operations of a ship, aircraft, or offshore installation, if the purposes of those operations does not include the disposal, or the treatment or transportation for disposal, of that waste or other matter; and “to dump” and “dumped” have corresponding meanings:

“London Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972; and includes any subsequent amendment or protocol to, or revision of, that convention accepted or ratified by New Zealand:

“Minor adverse effect” means an effect that does not result in such deleterious consequences as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water, and reduction of amenities:

“New Zealand Guidelines for Sea Disposal of Waste” means the latest edition of the guidelines on dumping published jointly by the Maritime Safety Authority and the Ministry for the Environment:

“Offshore installation” or “installation” includes any artificial structure (including a floating structure other than a ship) used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but does not include a pipeline:

“Part” means a group of rules made under the Maritime Transport Act 1994:

"Radioactive waste or other radioactive matter" means any waste or other matter containing any radioactive material within the meaning of the Radiation Protection Act 1965:

"Rules" includes maritime rules and marine protection rules:

"Territorial sea of New Zealand" means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977:

"Waste or other matter" means material and substances of any kind, form, or description.

180.3 Application

- (1) Rules 180.4 to 180.12 inclusive apply—
 - (a) to the issue by the Director under section 262 of the Act of permits required by section 261(1), (3), (4), (5), or (6) of that Act for the dumping of waste or other matter into the sea or onto or into the seabed beyond the outer limits of the territorial sea of New Zealand; and
 - (b) to the issue of such permits in respect of ships or aircraft of the New Zealand Defence force.
- (2) Nothing in Part 180 affects—
 - (a) any defence which a person may have to proceedings for an offence against section 264 of the Act on the grounds contained in section 265 of that Act; and
 - (b) the prohibition on the dumping of radioactive waste or other radioactive matter under section 258 of the Act.

Permit Applications

180.4 Application for permit

- (1) Every application for a permit must be—
 - (a) made in accordance with the requirements of section 269 of the Act; and
 - (b) accompanied by information in respect of the proposed dumping that shall include the following—
 - (i) an assessment of the alternatives to dumping; and
 - (ii) a detailed description and characterisation of the waste to be dumped; and
 - (iii) details of the proposed dump site; and
 - (iv) an assessment of potential effects of the proposed dumping on the environment; and

- (v) details of the proposed monitoring programme for compliance with any dumping permit issued.¹
- (2) Where in the Director's opinion it is necessary in order to make a decision on an application, the Director, subsequent to the receipt of an application for a permit, may in writing require the applicant to—
 - (a) elaborate specified information set out in the application; and
 - (b) supply additional specified information.
- (3) Where the Director requires additional information under rule 180.4(2), he or she may postpone notification of the application under rule 180.5.

180.5 Notification and consultation before assessing permit application

- (1) Before assessing an application for a permit, the Director must—
 - (a) publish a notice of his or her receipt of an application and of the availability of copies of the application and the information supporting it, in—
 - (i) each of the daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively; and
 - (ii) any other newspaper the Director considers appropriate for the purpose of notifying interested persons; and
 - (b) give interested parties a reasonable time (which shall be not less than 20 working days after the notice of the application) to make submissions on the application; and
 - (c) consult with such persons, representative groups within the maritime industry or elsewhere, tangata whenua, Government departments, Crown entities, and regional councils, as the Director in each case considers appropriate.
- (2) A notice under 180.5(1) shall—
 - (a) contain a description of the application including the location of the proposed dumping; and
 - (b) state that submissions on the application may be made in writing by any person; and
 - (c) state the closing date for the receipt of submissions; and
 - (d) state that a copy of every submission must be served on the applicant; and
 - (e) state the place where the application and accompanying information may be viewed and the address for service of the applicant.

¹ Refer to Annex 2 of the 1996 Protocol to the London Convention for the extent of information required and *New Zealand Guidelines for Sea Disposal of Waste* for further explanation. The *Guidelines* includes the application forms for dumping permits under the Maritime Transport Act 1994.

180.6 Duty to provide copy of submission to applicant

A person who makes a submission to the Director on an application for a permit must provide a copy of that submission to the applicant.

180.7 Notification not required in certain cases

The Director is not required to notify an application for a permit and consult as provided for under rule 180.5 before assessing that application if the Director is satisfied that the application relates to dumping of waste or other matter that—

- (a) will have, in the Director's view, a minor adverse effect on the marine environment; or
- (b) is clearly in breach of the London Convention.

180.8 Assessment of application for permit

- (1) The Director must assess every application for a permit in accordance with—
 - (a) section 270 of the Act; and
 - (b) the criteria, measures and requirements for the granting of dumping permits set out in the London Convention; and
 - (c) the guidelines for the implementation and uniform interpretation of the London Convention adopted from time to time by resolution of the contracting parties to that Convention and published by the International Maritime Organisation.
- (2) When assessing an application, the Director—
 - (a) must have regard to—
 - (i) the views submitted in every case where notification and consultation is carried out under rule 180.5; and
 - (ii) the *New Zealand Guidelines for Sea Disposal of Waste*; and
 - (b) may have regard to any guidelines on dumping not referred to in rule 180.8(1)(c), which he or she considers relevant, published from time to time by the International Maritime Organisation, another international organisation, or a national marine environment protection organisation of a state other than New Zealand.
- (3) The Director must not grant an application that would permit the dumping of any waste or other matter in breach of the London Convention.
- (4) The Director must not grant an application that would permit the dumping of any waste or other matter from any New Zealand ship into the sea or onto or into the seabed where that sea or seabed is within an area over which a State other than New Zealand exercises, or is entitled to exercise, jurisdiction for the purpose of preventing pollution by dumping, as provided for in international law.

Issuing of Permits

180.9 Scope and duration of permit

- (1) Every permit must specify—
 - (a) the types, sources and quantities of material to be dumped; and
 - (b) the location of the disposal site or sites; and
 - (c) the method of dumping, including any disposal management techniques for dealing with contaminated material.
- (2) Every permit is current for the period, or for the duration of a particular dumping operation, specified in the permit, as determined by the Director.

180.10 Conditions on permit

Every permit is subject to such conditions as may be specified by the Director, including conditions as to—

- (a) reporting; and
- (b) assessment; and
- (c) monitoring; and
- (d) the keeping and maintenance of records.²

180.11 Notice of decision

Every decision made by the Director on a permit application must be notified to—

- (a) the applicant for the permit; and
- (b) every person, representative group, tangata whenua, Government department, Crown entity, and regional council consulted by the Director under rule 180.5; and
- (c) every party that made submissions on the application; and
- (d) any other person, representative group, Government department, Crown entity and regional council the Director considers appropriate.

Emergency Dumping

180.12 Emergency dumping

- (1) An applicant may apply to the Director for an emergency permit to dump waste or other matter in an emergency.

² Subsequent to its issue, the Director may from time to time impose conditions on a permit in accordance with section 272 of the Act.

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- (2) Every application for an emergency permit to dump waste must be in accordance with rule 180.4(1). The Director may, subsequent to the receipt of such an application, exercise the powers specified in rule 180.4(2).
- (3) The Director must assess every application in accordance with section 270, and may only grant the permit where:
 - (a) the dumping is necessitated by an emergency which poses an unacceptable risk relating to human health, safety, or the marine environment, which admits of no other feasible solution; and
 - (b) the Director consults with the appropriate competent authority of any other country or countries that are likely to be affected by the dumping before granting the permit; and
 - (c) the International Maritime Organisation has been notified of the emergency permit application; and
 - (d) any recommendations from the International Maritime Organisation as to the most appropriate procedures to adopt for the dumping are incorporated into the permit as conditions to the maximum extent that the Director considers feasible given the time within which the dumping needs to occur and the general objective of avoiding damage to the marine environment.
- (4) Every emergency permit must be issued in accordance with rule 180.9 and is subject to any conditions that the Director may specify in accordance with rule 180.10.
- (5) Rules 180.5 to 180.8 inclusive and rule 180.11 shall not apply to any application for an emergency dumping permit.

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PART 180 DUMPING OF WASTE OR OTHER MATTER

Consultation Details

(This text does not form part of the rules contained in Part 180. It provides details of the consultation undertaken in making the rules)

Parties Consulted

The Canterbury and Auckland Regional Councils, Tranz Rail New Zealand Limited, 13 port companies (in a consolidated submission) and the Ministry of Foreign Affairs and Trade provided comment on Part 180. Union Shipping New Zealand Limited acknowledged Part 180 but provided no comment.

Definitions

The Ministry of Foreign Affairs and Trade questions the need to reproduce definitions found in the Maritime Transport Act 1994 and express a preference for the rules reciting that the applicable definitions from the Act apply.

Definitions have been reproduced in rules to aid readers by providing a more self-contained document.

The Ministry seeks confirmation that the definition of dumping, which does not reflect Article 1(4)(1)(3) of the 1996 Protocol to the London Convention (dealing with the storage of waste or other matter), does not refer to storage on the basis that "disposal" and "dumping" cannot be interpreted to mean "storage."

We cannot confirm that this is the case. We would argue that these terms can be interpreted to mean "storage".

The Ministry submits that the definition of "convention state" as used in the Maritime Transport Act and Part 180 is deficient in that it does not cover states which are party to amendments or protocols to the Convention when those amendments or protocols have not been accepted or ratified by New Zealand. The Act should, therefore, be amended to broaden the scope of the definition.

We would note that New Zealand is to become party to the 1996 Protocol to the London Convention and that New Zealand accepted all amendments to the 1972 Convention that are in force. Consequently, the definition of "convention state" in section 257 of the Act should prove fairly serviceable as it will cover—

- *states party to the 1972 Convention*

- *states party to the 1972 Convention as amended*
- *states party to the 1996 Protocol to the 1972 Convention.*

A further consideration is that as New Zealand is an island country, dumping operations under permits issued by the Director of Maritime Safety are unlikely to impact on the marine environment protection concerns of any other state.

The Ministry, observing that the definition of "waste or other matter" in Part 180 includes additional words, submits that if an Act's definition is to be changed in the rules, then the governing Act must also be amended.

The additional words were added to make it clear that the scope of Part 180 does not extend to considering the dumping of radioactive waste or other radioactive matter. We accept the Ministry's point and the matter of radioactive waste or other radioactive matter is dealt with by an addition to rule 180.3, dealing with the application of the Part.

The Ministry, noting that New Zealand may become party to a convention by means other than ratification or acceptance, submits that the definition of "London Convention" should be broadened by substituting "to which New Zealand is a party" in place of "accepted or ratified by New Zealand."

While we agree with the submission we consider that the definition should be kept consistent with the Act until such time as the Act is amended.

Application of Part 180

The Canterbury Regional Council proposes that rule 180.3 make it clear that the Part only applies to dumping outside the coastal marine area.

This proposal provides greater clarity in the application of the rules and is supported. Rule 180.3(1)(a) has been amended accordingly.

The Ministry of Foreign Affairs and Trade queries the inclusion of rule 180.3(1)(b) (concerning the issue of permits by convention states other than New Zealand) since New Zealand has no right or power to legislate or regulate for another convention state.

We agree that the rule is redundant. It has been deleted.

The Auckland Regional Council asks whether the application of Part 180 should refer to section 3 (Act to bind the Crown) and section 4 (defence force ships and aircraft) of the Maritime Transport Act 1994 to clarify who and what is exempt.

We do not think it necessary to state that the rules bind the Crown, but agree that it would be appropriate to make it clear that the Part applies to applications for permits in respect of ships and aircraft of the New Zealand Defence Force. An addition to rule 180.3 has been made accordingly.

Application for Permit

The Auckland Regional Council suggests rule 180.4(1) (concerning information to be submitted with an application for a dumping permit) would benefit from reference to the application forms annexed to the *New Zealand Guidelines for Sea Disposal of Waste*.

We agree this would be helpful. A reference to the forms has been added to the footnote to this rule.

The Auckland Regional Council suggests rule 180.4(2) (concerning additional information to be submitted following receipt of an application for a dumping permit) would benefit from some procedural information on when this requirement is likely to be invoked, what it means for consideration of the application, and how the applicant is to be notified of the requirement.

We agree. The rule has been amended accordingly.

Disclosure of Information Supporting Applications for Dumping Permits

The Auckland Regional Council, citing a particular instance of non-disclosure in the past, expresses concern that rule 180.5 may not ensure that information supporting an application for a permit to dump is freely available.

We do not share the Council's concerns. The presumption in the rule is that all information supporting the application will be available to any interested party. The particular case referred to by the Council should not be taken as a precedent as the assurances of confidentiality which led to the problem were inappropriate.

Time for Making Submissions on Notified Applications

Tranz Rail and the port companies point out that the reasonable time allowed for making submissions on applications for dumping permits under draft rule 180.5(1)(b) is vague. This is considered undesirable as it may lead to uncertainty and make planning for a dumping operation difficult. It is suggested that 20 working days should be specified, in line with the comparable requirement under the Resource Management Act 1991 for submissions on applications on coastal permits.

We agree. The rule has been amended accordingly.

Cases where Notification is not Required

Tranz Rail and the port companies propose widening of the scope of rule 180.7, which is concerned with the circumstances where an application for a dumping permit need not be notified. It is their submission that the rule cover cases where the application refers to disposal of matter in quantities and by a method comparable to previously granted permits and where the effects are well understood and are considered unlikely to be cumulative.

We support the sentiment behind the proposal but consider that such cases are effectively covered by rule 180.7(a) as drafted.

Minor Adverse Effect

The Auckland Regional Council argues that the expression "minor adverse effect" used in rule 180.7, is in the absence of further elaboration, rather open-ended. It suggests the rules or the *Guidelines* provide some guidance on the interpretation of the expression.

We agree. The expression has been defined in rule 180.2.

Status of New Zealand Guidelines for Sea Disposal of Waste

Tranz Rail and the port companies submit that in order to ensure consistency of treatment of applications for dumping permits and to avoid a patchwork of divergent controls, the *New Zealand Guidelines for Sea Disposal of Waste* should have mandatory status under Part 180 for dumping outside 12 nautical miles and the regulations made under the Resource Management Act 1991 for dumping within the coastal marine area.

We support an addition to rule 180.8(2) requiring the Director, when assessing an application, to have regard to the Guidelines.

We do not support the Guidelines being listed in rule 180.8(1), thus requiring the Director to assess applications in accordance with the Guidelines. Making the Guidelines mandatory in this way would amount to an incorporation by reference that would be contrary to the scheme of the Act and constitutional principles. The Maritime Transport Act 1994 permits incorporation by reference in a variety of cases. However, it would not be within the scope of section 452 of the Act to incorporate by reference a set of standards that the Maritime Safety Authority has co-authored. We are also mindful that there is a great deal of general comment and descriptive background in the Guidelines which are not appropriate in a mandatory set of standards.

The Auckland Regional Council observes that the *Guidelines* are not referred to except indirectly in rule 180.8(2)(a) but makes no specific proposal in respect of the status of the *Guidelines* under Part 180.

We take it that the Council is reading the reference to "a national marine environment protection authority" as including organisations within New Zealand. As this is not the intention, this rule is amended to make it clear that it covers only authorities in countries other than New Zealand.

Term of Dumping Permits

The Auckland Regional Council, noting that rule 180.9(2) does not specify any maximum term for dumping permits suggests that some "normal" and "maximum" term be defined, or some process instituted to align the Maritime Transport and Resource Management Acts in this respect.

We consider that there is no compelling environmental reason to align the processes of the two Acts in respect of the duration of permits. We are content to see the Director specify the duration of each permit as appropriate.

Conditions on Permits

The Auckland Regional Council expresses concern that including the conduct of a baseline survey of a proposed dump site as one of the conditions which the Director may impose on a permit under rule 180.10 may be misleading given that selection of a site is an integral part of any case accompanying an application for a permit.

We agree with the point made by the Council. Rule 180.10(1)(a) has been deleted.

Emergency Dumping

Tranz Rail and the port companies submit that the process set out in rule 180.12 for handling emergency dumping applications is too time consuming and is

unlikely to promote expedited assessment of an application in circumstances where time may be of the essence. It is proposed that the information requirements for emergency dumping applications be relaxed, including the need for the applicant to supply supporting comments from agencies and organisations that have been consulted and commented on the application.

The emergency dumping process, combined with the ability of the Director to issue exemptions from the requirements of marine protection rules under section 395 of the Maritime Transport Act 1994, is already sufficiently flexible to expedite applications in emergency circumstances. Dumping in an emergency is still a considered act and an appropriate assessment must still be made of each application. We do not support the proposal.

The Auckland Regional Council, noting that rule 180.12 is roughly equivalent to section 330 of the Resource Management Act 1991, asks if there is any equivalent under Part 180 to that Act's section 331, which concerns retrospective consents. [*Retrospective consents are in fact dealt with in section 330A of the RMA.*]

As noted above, emergency dumping is a considered and authorised act. No additional, retrospective authorisation is required.

New Zealand Guidelines for Sea Disposal of Waste

Tranz Rail, the port companies and Auckland Regional Council all propose technical and other amendments to the *New Zealand Guidelines for Sea Disposal of Waste*. The key issues raised in their submissions are summarised below.

Background Concentrations

Tranz Rail and the port companies do not support using twice the background concentrations of contaminants at the disposal site as a method for assessing the acceptability of dredged sediment for dumping. Problems arise with such a method in consequence of differences in the shoreline sediment geochemistry compared to that at disposal sites on the continental shelf at some distance from the shoreline. Specifically—

- environmental consequences could result from the use of this rule of thumb in the case of sediments containing metals in certain areas—for example, chromium in dredged material dumped in Nelson Haven, which has high background levels of that metal
- use of both the twice background concentrations approach and an action list, with specified lower and upper limits, could conflict. Applying the first approach could lead to the conclusion that a sediment is not acceptable for dumping. On the other hand, the action list approach could produce the opposite result—that the same sediment is acceptable. This could be the case, for example, with matter containing cadmium.

The Auckland Regional Council does not support the use of background values as an alternative to screening levels in the action list because it provides a licence to pollute up to ER-M levels, allows for a creeping increase in sediment contamination levels, and takes no account of any effects linked to background levels.

These comments are accepted by the Maritime Safety Authority. The Guidelines have been amended accordingly.

Monitoring of Dumping Operations

The Auckland Regional Council proposes that guidance on monitoring should not be restricted to post-dumping and reference should be made to the full range of possible monitoring methods and techniques, such as bioaccumulation monitoring.

We support the proposal and the section on monitoring has been revised accordingly.

Application of Precautionary Approach

Tranz Rail and the port companies submit that the characterisation of the application of the precautionary approach in the *Guidelines* is inappropriate on the basis that that approach applies only where there is a threat of serious and irreversible harm in situations of scientific uncertainty. The depiction of the approach in the *Guidelines* is not consistent with this.

We are comfortable with the characterisation of the precautionary approach in the Guidelines, given that the phraseology objected to is taken directly from Article 3 of the 1996 Protocol to the London Convention.

Resource Management Act Processes

The Canterbury Regional Council comments on aspects of the depiction of the Resource Management Act process in respect of dumping permits.

The points made by the Council will be reviewed by the Ministry for the Environment and the Guidelines amended where appropriate.

Editorial, Formatting and Other Proposals

Tranz Rail and the port companies make a large number of editorial and formatting suggestions aimed at improving the readability, consistency and clarity of the *Guidelines*. These are in most cases supported by the Maritime Safety Authority and the *Guidelines* have been edited accordingly.

The Canterbury Regional Council makes a number of technical editing proposals in respect of the definitions and glossary in the *Guidelines*, which have been reflected in the revision.

The Auckland Regional Council proposes a number of technical editing changes to the text of the *Guidelines*, including additional cross-referencing, most of which have been adopted.

The Ministry of Foreign Affairs and Trade proposes an editorial change to the definitions section. This too has been reflected in the revised *Guidelines*.