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To: [Waste Reform](#)
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Subject: Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62
Date: Monday, 15 January 2018 7:27:39 PM

Good day Sirs and thank you for the opportunity to comment.

Having perused the document, and with the benefit of assistance from DWER officers, we offer the following comments.

There is a level of fear in the recycling industry that changes brought about subsequent to this paper will have an adverse impact upon the viability of the businesses. Whilst we share some degree of this, it appears that the document is intended to address bulk fill from large scale excavations only.

If we are correct in this conclusion, (or if not) we suggest that clarification by way of a pre-amble, or statement of objectives would be helpful in addressing unnecessary fears or response from potential stakeholders.

If the intent is to address , or catches up recycled materials, the Minister should give consideration to the following factors:

- Our material is sourced from many sites in our respective catchment areas – and so the potential for contamination of a single site is increased, but the potential for a singular end user to receive contaminated product is diluted .
- Meeting the prospective testing regime could be cost prohibitive if the frequency per unit of volume is high.
- The net result could gear towards higher disposal to landfill due to the cost and convenience (time for processing). Although we could not suggest a formula , there would be a fairly direct and proportional relationship between the choices a contractor may make.
- This would have an adverse impact upon contract / development costs, and potentially result in higher consumption of the landfill resource ostensibly meant for preservation.
- We note that the document refers to method 3.1 & 3.2 of the AS.1411 (kindly made available by DWER) . It should be explained to the reader that in this standard, those items refer only to the *METHOD* of collecting samples and offer no guidance on the environmental issues or Lab work.
- We refer to the below noted 7.5.2 of the Federal standard referenced. In the event that this level of sampling is implemented, we suggest that may have a substantial negative impact upon the viability of current recyclers, to such an extent that it may be interpreted as being implemented with an entirely different agenda.. and likely to draw the most vociferous objections from the industry.
- The subject document states “*when a site is suspected of contamination*” this triggers the processes and measures alluded to in the document , however neither the discussion paper nor the Federal one referenced articulate *whose* suspicion may trigger the process, and to whom those suspicions should be articulated.
- On one end of the spectrum of possibilities, vexatious allegations would be expensive and problematic . On the other - proper stewardship of the environment demands that

actual occurrences be appropriately handled.

We suggest that provision be made to respond to the prior use of the site in relation to determining presence of contamination and appropriate sampling. The table of contaminants in the subject document, appendix "B" is extensive , and expensive - and if necessary, should be made clear at the earliest possible time in order for the responsible party to carry the expense and factor it into their costs.

Recycled materials:

Whilst the risk of contamination of feedstock to some scale may be present, this is diluted in the outgoing product by the fact that it is drawn from a multiplicity of sites. Recyclers need to be assured that any changes to the current testing regime take into account the varied mix of product and sources.

Currently our specific site, and many like ours - produce a product which meets (*or is intended to meet*) DOH guidelines and generally this is limited to testing for asbestos. One would want to have some assurance that insulates a waste recycler having their product "*suspected*" of , or declared contaminated after the fact – such as where the material has been used on another site.

Given the above noted issues, we suggest that the existing handling and receipt protocols should be considered in any demand for a more stringent regime, and were one to be implemented, some consideration given to a reasonable , workable standard of sampling in the event of a positive result coming back from testing.

From the Federal National Environment Protection (Assessment of Site Contamination) Measure 1999:

7.5.2 Number of samples

Table 4 below provides the minimum number of samples recommended for characterisation of stockpiles up to 200 m³ comprising similar materials. A greater number of samples may be required when there is a large range in contaminant concentrations or soil types. If only the minimum number of samples is collected and there is a large range in contaminant concentration, then either the maximum concentration should be assumed for disposal purposes or additional samples collected and analysed and the situation re-evaluated. In situ samples taken prior to excavation may be helpful for informing the decision on the number of samples required for adequate characterisation of stockpiles.

Table 4. Minimum number of samples recommended for initial assessment of stockpiles

Stockpile volume, (m³)	No. of samples
<75	3
75 - <100	4
100 - <125	5
125 - <150	6
150 - <175	7
175 - <200	8

The recommended sampling frequency (Table 4) applies to the characterisation of homogenous

soils suspected of contamination. Lower sampling rates may be derived for soil quantities greater than 200 m³ by applying statistical analysis. Worked examples of applying 95% UCL_{ave} to characterise stockpiles are included in EPA Victoria (2010).

Jurisdictions may have specific requirements where materials are to be recycled, recovered and reused for beneficial purpose

Thank you once again for the opportunity to comment and your officers' assistance in making clarifications available.

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