



Western Australia Branch

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Amendments proposed following the Eclipse decision
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Comment on Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of WA [No.4] (2016) WASC 62

The Waste Management Association of Australia (WMAA) welcomes the opportunity to provide comment on the proposed amendments to the *Environmental Protection Regulations 1987* (WA), which provide for use of clean fill and uncontaminated fill.

WMAA is the national peak body for the waste and resource recovery industry, with members based in a broad range of business organisations, government, universities and community groups. WMAA's 1800 members are involved in a range of important waste management and resource recovery activities within the Western Australian (WA) economy, including infrastructure investment and operations, collection, manufacturing of valuable products from resource recovered materials, energy recovery and responsible management of residual materials, and community engagement and education. Comment has been provided by the WMAA WA Branch Committee.

In providing comment on these amendments, WMAA is keen to ensure that the proposed approach does not undermine the Construction and Demolition (C&D) recycling sector, while providing appropriate safeguards to ensure the environment is protected.

Industry investment in Quality Product

WMAA has provided a range of feedback on the various documents to the Department since 2014 relating to fill materials – including the 'End of Waste' documents. Throughout all of these consultations WMAA members have consistently emphasised that legitimate operators in WA have a vested interest in ensuring that the products they produce are free from contamination – their reputation and sale of their product is dependent on their customers having confidence that the product they are purchasing is both fit for purpose and will not contaminate a site.

Support for Level Regulatory Playing Field

WMAA is also keen to ensure a level playing field for participants, this means that all organisations which should be paying the Waste Avoidance and Resource Recovery levy are in fact paying the levy.

As such, in order for the C&D recycling industry to be viable in WA, there needs to be effective and consistent regulation of the levy application. WMAA understands it is the intent of these amendments to clarify the situation regarding levy application.

Support for a Risk Based Approach

As with previous comments on the 'End of Waste' documents, WMAA would like it noted that although it is possible chemicals *could* be present in the material used, it is unlikely that they *will* be present.

These issues however are not always going to be relevant and for some of the issues – for example the presence of organochlorine – guidance is not provided on when it is likely these substances are likely to be present.

It is noted that the Department of Water and Environmental Regulation (DWER) *Regulatory Principles* identify that a risk based approach will be taken 'with consideration of the costs and benefits associated with different levels of risk to public health and the environment'. To do this, a similar framework and guidance to that of Contaminated Sites Management should be developed by the DEWR with reference to both ecological and human risk. The risk rating ascribed to each risk together with its treatment, it is recommended, should differ based on intended use of fill - industrial, commercial and residential developments - and foreseeable material risk.

Definition of Uncontaminated Fill

The principle concern with what is currently being proposed is how uncontaminated fill is defined, and the associated testing regime that will be ascribed to it. The proposed testing regime is very costly to undertake, increasing the price of the recycled C&D material from \$2-3/ tonne to \$20/ tonne. This commercial impact will reduce recycled materials ability to compete with virgin product, substantially undermining what is already a challenging market for recyclers. It should also be noted that all this material is currently being tested for asbestos in line with DEWR guidelines.

WMAA suggests that instead of taking this approach to testing for uncontaminated fill, a risk based testing regime is put in place. Legitimate operators will continue with their standard operating procedures in accepting material and testing only where there is suspicion of contamination.

As highlighted in previous submissions, WMAA understands the need to protect the environment through a rigorous approach to risk associated with the use of waste derived materials. There are however concerns that the onerous requirements, in the absence of incentives and support for the industry, will discourage the development of markets for recycled materials, as these require a high level of investment to conform to the amendments.

Recycling material is frequently a marginal activity and if the State Government is genuinely is committed to diverting waste from landfill, the industry will need financial and regulatory support to achieve this object, for example by WA Government introducing green public procurement for its own purchasing (e.g. road design and construction), as well as setting specification levels for recycled inputs/content, as we see in the European Union.

Should DWER like to continue the conversation or clarify any of the comments made above, please do not hesitate to contact the undersigned.

Yours sincerely



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