



# **Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014**

## **The reclaimed asphalt pavement exemption 2014**

### **Introduction**

This exemption:

- is issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation); and
- exempts a consumer of reclaimed asphalt pavement from certain requirements under the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the application of that waste to land or in connection with a process of thermal treatment, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the reclaimed asphalt pavement order 2014'.

### **1. Waste to which this exemption applies**

- 1.1. This exemption applies to reclaimed asphalt pavement that is, or is intended to be:
  - 1.1.1. applied to land for road related activities including road construction or road maintenance activities being:
    - (a) use as a road base and sub base,
    - (b) applied as a surface layer on road shoulders and unsealed roads, and
    - (c) use as an engineering fill material.
  - 1.1.2. used as an alternative input into thermal processes for non-energy recovery purposes in the manufacture of asphalt.
- 1.2. Reclaimed asphalt pavement means an asphalt matrix which was previously used as an engineering material and which must not contain a detectable quantity of coal tar or asbestos.

### **2. Persons to whom this exemption applies**

- 2.1. This exemption applies to any person who applies, or intends to apply, reclaimed asphalt pavement to land and any person who uses, or intends to

use, reclaimed asphalt pavement in connection with a process of thermal treatment as set out in 1.1.

### **3. Duration**

- 3.1. This exemption commences on 24 November 2014 and is valid until revoked by the EPA by notice published in the Government Gazette.

### **4. Premises to which this exemption applies**

- 4.1. This exemption applies to the premises at which the consumer's actual or intended application of reclaimed asphalt pavement is carried out.

### **5. Revocation**

- 5.1. 'The reclaimed asphalt pavement exemption 2012' which commenced on 16 January 2012 is revoked from 24 November 2014.

### **6. Exemption**

- 6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the POEO Act and the Waste Regulation in relation to the consumer's actual or intended application of reclaimed asphalt pavement to land or use in connection with a process of thermal treatment at the premises:

- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39, 40 and 42 of Schedule 1 of the POEO Act;
- Part 4 of the Waste Regulation;
- section 88 of the POEO Act; and
- clause 109 and 110 of the Waste Regulation.

- 6.2. The exemption does not apply in circumstances where reclaimed asphalt pavement is received at the premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

### **7. Conditions of exemption**

The exemption is subject to the following conditions:

- 7.1. The reclaimed asphalt pavement can only be:
- 7.1.1. applied to land for road related activities including road construction or road maintenance activities being:
    - (a) use as a road base and sub base,
    - (b) applied as a surface layer on road shoulders and unsealed roads, and
    - (c) use as an engineering fill material
  - 7.1.2. used as an alternative input into thermal processes for non-energy recovery purposes in the manufacture of asphalt.

- 7.2. The consumer must ensure that any application of reclaimed asphalt pavement to land or any use of reclaimed asphalt pavement in connection with a process of thermal treatment must occur within a reasonable period of time after its receipt.

## 8. Definitions

In this exemption:

**application or apply to land** means applying to land by:

- spraying, spreading or depositing on the land; or
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

**asphalt matrix** means the solid material typically comprising of sand, aggregates and similar materials bound together with bituminous and/or other similar binders.

**coal tar** means the by-product of the thermal processing of coal and means material that has or reasonably is suspected to have present volatile organic contaminants, such as phenols, as well as other toxic materials such as polycyclic aromatic hydrocarbons (PAHs).

**consumer** means:

- a person who applies, or intends to apply, reclaimed asphalt pavement to land; and
- a person who uses, or intends to use, reclaimed asphalt pavement in connection with a process involving thermal treatment.

**detectable quantity of coal tar** means the coal tar deemed to be present in an asphalt matrix when it gives a positive red colour result when tested using RTA Test Method T542.

**Manager Waste Strategy and Innovation  
Environment Protection Authority  
(by delegation)**

## Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption. The current version of this exemption will be available on [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

In gazetting this exemption, the EPA is not in any way endorsing the use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this exemption are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this exemption nor the accompanying order guarantee that the environment, human health or agriculture will not be harmed.

The consumer should assess whether or not the reclaimed asphalt pavement is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

Regardless of any exemption provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site.

The receipt of reclaimed asphalt pavement remains subject to other relevant environmental regulations in the POEO Act and Waste Regulation. For example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the special requirements for asbestos waste (Part 7 of the Waste Regulation), regardless of having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

Failure to comply with the conditions of this exemption constitutes an offence under clause 91 of the Waste Regulation.