



Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014

The excavated public road material order 2014

Introduction

This order, issued by the Environment Protection Authority (EPA) under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation), imposes the requirements that must be met by suppliers of excavated public road material to which 'the excavated public road material exemption 2014' applies. The requirements in this order apply in relation to the supply of excavated public road material for application to land within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities.

1. Waste to which this order applies

- 1.1. This order applies to excavated public road material. In this order, excavated public road material means materials:
- being rock, soil, sand, bitumen, reclaimed asphalt pavement, gravel, slag from iron and steel manufacturing, fly and bottom ash, concrete, brick, ceramics and materials that hold a resource recovery order for use in road making activities; and
 - that have been excavated during the construction and maintenance of council and RMS public roads and public road infrastructure facilities.

This does not include any waste that contains coal tar or asbestos, or any waste that is classified as hazardous, restricted solid, special or liquid waste as defined in the Act.

2. Persons to whom this order applies

- 2.1. The requirements in this order apply, as relevant, to any person who supplies excavated public road material that has been generated, processed or recovered by the person.
- 2.2. This order does not apply to the supply of excavated public road material to a consumer for land application at a 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.

3. Duration

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

4. Generator requirements

The EPA imposes the following requirements on any generator who supplies excavated public road material.

Notification

- 4.1. On or before each transaction, the generator must provide the following to each person to whom the generator supplies the excavated public road material:
- a written statement of compliance certifying that all the requirements set out in this order have been met;
 - a copy of the excavated public road material exemption, or a link to the EPA website where the excavated public road material exemption can be found; and
 - a copy of the excavated public road material order, or a link to the EPA website where the excavated public road material order can be found.

Record keeping and reporting

- 4.2. The generator must keep a written record of the following for a period of six years:
- the quantity of any excavated public road material supplied; and
 - the name and address of each person to whom the generator supplied the excavated public road material.

5. Definitions

In this order:

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.

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, excavated public road material to land.

council means the council of a local government area.

generator means a person who generates excavated public road material.

public roads means:

- (a) any road that is opened or dedicated as a public road, whether under the *Roads Act 1993* (the Roads Act) or any other act or law, and
- (b) any road that is declared to be a public road for the purposes of the Roads Act.

public road infrastructure facilities means:

- (a) tunnels, ventilation shafts, emergency accessways, vehicle or pedestrian bridges, causeways, road-ferries, retaining walls, toll plazas, toll booths, security systems, bus lanes, transit lanes, transitways, transitway stations, rest areas and road related areas (within the meaning of the *Road Transport (General) Act 2005*), and
- (b) associated public transport facilities for roads used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*, and
- (c) bus layovers that are integrated or associated with roads (whether or not the roads are used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*), and
- (d) traffic control facilities (as defined by the *Transport Administration Act 1988*), RMS road safety training facilities and safety works.

RMS means the Roads and Maritime Services of New South Wales.

road corridor means land that is used for the purposes of a road or road infrastructure facilities or for maintaining or constructing a road or road infrastructure facilities and that is owned or managed by the RMS or council.

transaction means:

- in the case of a one-off supply, the supply of a batch, truckload or stockpile of excavated public road material that is not repeated.
- in the case where the supplier has an arrangement with the recipient for more than one supply of excavated public road material the first supply of excavated public road material as required under the arrangement.

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

Notes

The EPA may amend or revoke this order at any time. It is the responsibility of each of the generator and processor to ensure it complies with all relevant requirements of the most current order. The current version of this order will be available on www.epa.nsw.gov.au

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

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

Any person or entity which supplies excavated public road material should assess whether the material is fit for the purpose the material is proposed to be used for, and whether this use may cause harm. The supplier may need to seek expert engineering or technical advice.

Regardless of any exemption or order 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(s).

The supply of excavated public road material 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 this order, is guilty of an offence and subject to prosecution.

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

Failure to comply with the conditions of this order constitutes an offence under clause 93 of the Waste Regulation.