



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

The mulch exemption 2016

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 mulch 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, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the mulch order 2016'.

1. Waste to which this exemption applies

- 1.1. This exemption applies to mulch that is, or is intended to be, applied to land as a soil amendment.
- 1.2. **Mulch** means plant material shredded and/or screened to a preferred particle size grading for particular applications. Mulch, by virtue of the nature and source of the plant material, must pose minimal risk of the presence of physical and chemical contaminants.¹

Mulch may include urban wood residues and forestry and sawmill residues. Mulch does not include plant material from kerbside waste collections.

2. Persons to whom this exemption applies

- 2.1. This exemption applies to any person who applies, or intends to apply, mulch to land as set out in 1.1.

3. Duration

- 3.1. This exemption commences on 25 July 2016 and is valid until revoked by the EPA by notice published in the Government Gazette.

¹ Where there is a significant risk of the presence of physical and chemical contaminants in plant material, such as from kerbside waste collections, this waste stream must be assessed against and comply with the conditions of 'the pasteurised garden organics order 2016'.

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 mulch is carried out.

5. Revocation

- 5.1. 'The raw mulch exemption 2014' which commenced on 24 November 2014 is revoked from 25 July 2016.

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 mulch to land as a soil amendment at the premises:

- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 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 mulch 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. At the time mulch is received at the premises, the material must meet all requirements for mulch which are required on or before the supply of mulch under 'the mulch order 2016'.
- 7.2. Where written measures for the land application of mulch are required under 'the mulch order 2016', a processor must provide these to the consumer. The consumer must apply the mulch to land in accordance with the written measures.
- 7.3. The consumer must ensure that they do not cause or permit the migration of leachate from the land application site.
- 7.4. The consumer must not undertake further processing of the mulch at the land application site.
- 7.5. The consumer must ensure that any application of mulch to land occurs 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;
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

consumer means a person who applies, or intends to apply, mulch to land.

engineered wood products means engineered, painted, treated or composite wood products such as particleboard, oriented strand board, plywood, laminated veneer lumber, glulam or fibreboard that are manufactured with glues, resins, water repellents, fire retardants, fungal inhibitors and/or other chemicals.

environmentally sensitive area means any of the following:

- (a) land to which [State Environmental Planning Policy No 14—Coastal Wetlands](#) or [State Environmental Planning Policy No 26—Littoral Rainforests](#) applies;
- (b) land within a wetland of international significance declared under the [Ramsar Convention on Wetlands](#) or within a World heritage area declared under the [World Heritage Convention](#);
- (c) land reserved as an aquatic reserve under the [Fisheries Management Act 1994](#) or as a marine park under the [Marine Parks Act 1997](#);
- (d) land within 100 metres of land to which paragraph (a), (b) or (c) applies;
- (e) land identified in any environmental planning instrument as being of high biodiversity significance;
- (f) land reserved under the [National Parks and Wildlife Act 1974](#) or land acquired under Part 11 of that Act;
- (g) land reserved or dedicated under the [Crown Lands Act 1989](#) for the preservation of flora, fauna or for other environmental protection purposes;
- (h) land identified as being critical habitat under the [Threatened Species Conservation Act 1995](#) or Part 7A of the [Fisheries Management Act 1994](#);
- (i) land dedicated or set apart under the [Forestry Act 2012](#) or the former Act as a flora reserve;
- (j) land (including subterranean lands) declared to be a wilderness area under the [Wilderness Act 1987](#) or the [National Parks and Wildlife Act 1974](#);
- (k) any additional areas listed as an environmentally sensitive area in a relevant Local Environmental Plan; and
- (l) agricultural land being land used for broad acre cropping, pasture, horticulture, growing fruit and keeping livestock.

forestry and sawmill residues are untreated and uncontaminated plant materials from forestry operations such as logging, silviculture and sawmilling. Forestry and sawmill residues include materials such as bark, woodchip, sawdust and wood fibre that are collected as a source separated material stream for processing.

preservative treated or coated wood residues means wood residues that are preservative treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP) and/or coated with substances such as varnish or paint.

processor means a person who processes, mixes, blends, or otherwise incorporates mulch into a material in its final form for supply to a consumer.

urban wood residues means untreated, unpainted, and uncontaminated urban derived timber and wood material that is collected as a separate material stream for processing. Urban wood residues include materials such as off-cuts, saw dust, wood shavings, packaging crates and pallets.

**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

In gazetting or otherwise issuing 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 mulch 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 scientific 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 transport, supply and land application of mulch remains subject to additional relevant legislation. 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. Also, the requirements of other legislation must be met including, but not limited to, the *Plant Diseases Act 1924*, *Noxious Weed Act 1993* and *Threatened Species Conservation Act 1995*.

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

Whilst 'the mulch order 2016' requires that the mulch must not contain engineered wood products or physical contaminants including but not limited to glass, metal, rigid plastics, flexible plastics, or polystyrene, the EPA recognises that the mulch may contain extremely low and incidental amounts of engineered wood products and / or physical contaminants. The processor must implement procedures to prevent the presence of engineered wood products and / or physical contaminants in the mulch. These procedures must be formally documented and their implementation demonstrated. However, as noted in 'the mulch order 2016', the mulch must not contain any asbestos, or preservative treated or coated wood residues.

Mulch is typically applied to land as a soil amendment at depths of 50 – 100mm. While there are specific applications that may require a greater depth than 100mm, the EPA considers the reasonable application of mulch to be no greater than 200mm.

Adverse environmental impacts are associated with the land application of mulch such as the spreading of weeds, diseases, and pests. The EPA recommends a distance of at least 100m be maintained between the land upon which mulch is applied and environmentally sensitive areas.

Mulch that meets the conditions of this exemption should be applied to land by the consumer within 2 weeks of being received. Where there are extenuating circumstances the mulch should be land applied within 4 weeks. The EPA considers that 6 weeks would be the absolute limit in all circumstances.