

Consultation report on the changes to the regulation of waste in NSW

Protection of the Environment Operations
(Waste) Regulation 2014
Protection of the Environment Operations
(General) Regulation 2009
Schedule 1 of the *Protection of the Environment
Operations Act 1997*



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1 Introduction

The *Protection of the Environment Operations Act 1997* (POEO Act) is the primary piece of environmental legislation in New South Wales (NSW). Regulations may be made under the POEO Act to give effect to powers in the Act, to protect the environment and reduce risks to human health in NSW.

The NSW Environment Protection Authority (EPA) has a responsibility to efficiently regulate waste facilities and ensure that recovered materials are produced with all the necessary procedures to protect the community and the environment.

The NSW Government implemented substantial reforms to modernise the NSW waste industry with the introduction of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation). The 2014 reforms led to significant improvements in the operation of most waste facilities and improved ability for the EPA to regulate waste facilities. Despite this, the EPA has become aware of a range of ongoing issues in the construction and demolition (C&D) waste sector.

These issues were identified at a number of C&D waste facilities in the regulated area¹ of NSW that are licensed (or are required to be licensed) to store, process or recover C&D waste. The issues at these facilities include:

- poor screening and inspection processes that fail to properly remove contaminants from mixed C&D waste (including skip bins) before loads of waste are processed and sent off site for reuse
- careless handling of waste, including asbestos waste, at the recycling facility, causing recycled products to become contaminated
- sending unprocessed mixed loads of waste, including recoverable resources, off site for disposal
- non-compliant production of recovered fines under the resource recovery order.

The EPA is also aware that many licensed C&D waste facilities are diverting from landfill well under 50% of the waste they receive. The C&D waste sector has the potential to return large volumes of recovered material into the economy and the environment. However, poor practices expose the community and environment to risks from contaminated products and can lead to the loss of valuable resources from our productive economy.

The NSW Government is committed to improving recovery rates for C&D waste. The Government wants to ensure that the investment of the *Waste Less, Recycle More* initiative delivers a modern waste industry producing quality recovered products that can be used safely. This provides substantial benefits for the NSW community and environment.

Under the [NSW Waste Avoidance and Resource Recovery Strategy](#) (Waste Strategy), the target recovery rate for C&D waste is 80% by 2021. Legislating for improved sorting of waste streams supports the Waste Strategy and is consistent with the waste hierarchy enshrined in NSW legislation.

If a recycling facility meets the licensing thresholds for storing or processing C&D waste, it should have procedures in place to maximise resource recovery and minimise risks to the environment and human health. In a modern waste industry, these facilities must produce quality materials that can safely be reused, diverted back into the economy or re-enter the environment.

¹ The regulated area consists of local government areas located in the metropolitan or regional levy areas. The levy areas are defined in Clause 7 of the Protection of the Environment Operations (Waste) Regulation 2014.

A number of other jurisdictions, including South Australia, Germany and Ireland, have introduced legislation and licensing requirements to maximise resource recovery from C&D waste and regulate the on-site processing of this waste. The [Australian National Waste Report 2016](#) compares the resource recovery rates in Australian jurisdictions.

The proposed changes to the Waste Regulation were outlined in a consultation paper (the Consultation Paper) and released for public consultation for 28 days from 21 October to 17 November 2016. This report outlines the feedback received during the consultation and responds to items raised.

1.1 Summary of proposed changes for consultation

The following information was included in the Consultation Paper outlining the proposed changes to the Waste Regulation, the Protection of the Environment Operations (General) Regulation 2009 (General Regulation), and the POEO Act. A commencement date of 1 March 2017 was proposed for the majority of these changes.

Protection of the Environment Operations (Waste) Regulation 2014

Proposed change	Details
Construction and demolition waste industry reforms	<p>Applies to C&D waste facilities that are licensed or required to be licensed, and receive construction and demolition (C&D) waste or building and demolition (B&D) waste and/or soils, masonry and ceramics.</p> <p>New requirements for licensed C&D waste facilities to comply with the standards for managing construction waste in NSW (draft standards). The draft standards include requirements for inspecting, sorting, recovery and responsible handling of C&D waste.</p> <p>Changes to the production and reuse of recovered fines:</p> <ul style="list-style-type: none"> the 'Continuous Process Recovered Fines Order 2014' and 'Batch Process Recovered Fines Order 2014' will no longer be in effect recovered fines that meet the new (yet to be released) specifications will be able to be used as daily cover at landfills specific orders and exemptions will be required for the use of recovered fines for land application.
Improving performance at landfills	<p>Landfills in the regulated area will no longer be able to:</p> <ul style="list-style-type: none"> exhume waste send mixed loads of waste off site for disposal.
Improving handling of asbestos waste	<p>Clarifying of requirements for waste operators handling, transporting or landfilling asbestos:</p> <ul style="list-style-type: none"> it is a requirement that bonded asbestos is securely packaged it is a requirement that friable asbestos is kept in a sealed container it is a requirement to wet down asbestos-contaminated soils during transport the occupier of the landfill and the person disposing the asbestos waste must prevent dust from being generated from the asbestos waste and prevent any dust in the waste from being stirred up the EPA can provide written authorisation for landfills (licensed and unlicensed) to use alternative cover material for asbestos waste, that is, material other than virgin excavated natural material (VENM) the EPA will set out the depth of any alternative cover material in clause 80 of the Waste Regulation, unless a depth is otherwise agreed upon and specified in the written authorisation. <p>Increased penalties for non-compliance with asbestos transport and disposal requirements.</p>

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Proposed change	Details
Clarifying application of transported waste deductions	Facilities claiming a transported waste deduction: <ul style="list-style-type: none"> • must prove the waste has been sent to a lawful facility, including any intermediary facility • landfills can only claim transported waste deductions if the waste has not been exhumed and the waste was not sent for disposal at another facility.
New eligible operational purpose deductions	New operational purpose deductions for media used in biofilters at resource recovery facilities and for bedding layers at landfills.
Clarifying application of the levy at resource recovery facilities	Amendments to clarify the application of waste contributions at waste processing, waste storage and resource recovery facilities. These clarifications are in line with existing practices. This includes: <ul style="list-style-type: none"> • trigger events • payment obligations • concessional levy rates • rounding and interest.
Monitoring of waste at levy-liable facilities	Removing requirements for waste processing, waste storage and resource recovery facilities to complete mandatory annual volumetric surveys. These facilities will only need to complete a volumetric survey or other stock-take when required by notice from the EPA. Introducing the ability for the EPA to pragmatically account for moisture loss in waste estimations. The facility will be consulted on the mass loss calculations. Clarifying that resource recovery facilities that receive only hazardous waste, liquid waste, restricted solid waste or clinical and related waste are not required to have weighbridges. Clarifying the method and manner of how the EPA can require video-monitoring.
Improved transport of waste	Removing of the proximity principle offence (clause 71). Requirements for transporters not to remix loads that have been sorted at a waste facility. Increased penalties for not covering trackable waste and not reporting unsafe transport of waste.

Protection of the Environment Operations (General) Regulation 2009

Proposed change	Details
Change the land pollution offence	Clarification that the land pollution offence for hazardous waste, restricted solid waste and prescribed amounts of waste tyres or asbestos waste applies only to off-site land application.

Schedule 1 of the Protection of the Environment Operations Act 1997

Proposed change	Details
Environment protection licensing changes	Amending scheduled activities for further clarity on the waste licensing requirements for: <ul style="list-style-type: none"> • facilities at which waste is transferred between vehicles or modes of transport • facilities that receive biosolids • energy from waste facilities • wood chipping yards.

2 Scope of consultation

The formal consultation on the proposed changes to the waste regulatory framework opened on 21 October 2016 and closed on 17 November 2016.

The EPA held two industry forums during the consultation period. Attendees included C&D waste recyclers, consultants, building and development industry representatives, local government and peak industry bodies. During the forums, the EPA explained the most significant proposed changes and responded to the questions and issues raised. The EPA also received feedback from attendees on the proposed changes.

The range of stakeholders contacted included all environment protection licence (EPL) holders for waste activities, government agencies, industry associations, environmental groups, consultants, peak NGOs, tyre associations, weighbridge providers, landfill operators, the peak waste and recycling associations, and many small and medium enterprises.

This report outlines and responds to the key issues raised during the consultation process.

2.1 Media release

A media statement was released by the EPA on 21 September 2016 to announce the release of the Consultation Paper.

2.2 Letters and emails

- 1646 subscribers to the EPA's waste updates service were notified by email.
- 295 stakeholders from local government and industry received letters via email from the EPA informing them of the public consultation.

2.3 Websites

The Consultation Paper was published on the EPA's website and the NSW Government's 'Have your Say' website.

2.4 Forums

The EPA held two forums, one in Parramatta and another in Newcastle. These were attended by a total of 82 stakeholders.

3 Overview of submissions

Thirty-two (32) written submissions were received from industry, government and the public.

Of these submissions, just under half contained generally supportive statements of the proposals and their principles. Some commended the NSW Government for its efforts in addressing C&D waste practices and recovery through the draft standards, making improvements to the handling of asbestos waste and introducing the offence for exhuming waste from landfills. Others raised concerns with the proposed changes, mainly in relation to the implementation and compliance timeframes and the mechanisms to set and manage the mandatory resource recovery rates. Some submissions provided suggestions for how the proposals can be implemented and managed, or recommendations on how to improve the proposed changes.

The peak waste management associations expressed support for the general intention of the proposals and the benefits of providing a level playing field in the C&D waste industry, and that the changes addressed issues raised during the implementation of the Waste Regulation.

No submissions were unresponsive to the changes in their entirety, but submissions did identify a number of specific changes that were unsupported. These included the offence to send mixed waste from a landfill, the repeal of the proximity principle, and the proposed resource recovery rates for C&D waste. Generally, the cost and timing of the proposed changes was also raised but it was unclear if these submissions supported the proposed changes.

The amendments in the Consultation Paper can be divided into the following main topic areas:

1. C&D waste industry reforms
2. improving performance at landfills
3. improving the handling of asbestos waste
4. transported waste deductions
5. new operational purpose deductions
6. clarifying the application of the levy at resource recovery waste facilities
7. monitoring of waste at licensed facilities
8. waste transport
9. changes to the land pollution offence
10. changes to licensing requirements.

The main issues raised in the consultation and the EPA's responses are set out in the following chapters.

4 Construction and demolition waste industry reforms

4.1 Amendments proposed for consultation

Scheduled waste facilities that carry out waste processing, storage and/or resource recovery in the Metropolitan Levy Area (MLA) and receive more than 6000 tonnes of C&D waste per annum (C&D Facilities) will be required to implement the draft standards including inspection, sorting and storage requirements. The draft standards have previously been referred to as C&D Guidelines and the C&D Minimum Standards, but are referred to from now on as the draft standards.

C&D Facilities will also be required to meet resource recovery targets depending on the scale of their operations.

Where it can be demonstrated that a specific type of waste can safely be used for another purpose, rather than being disposed of in accordance with the waste regulations, the EPA may grant permission for that waste to be used for the specified purpose, subject to strict conditions. Due to non-compliant production of recovered fines¹ the existing general resource recovery orders and associated exemptions for land application of recovered fines will be revoked. This includes the 'continuous process' recovered fines order 2014, the 'continuous process' recovered fines exemption 2014, the 'batch process' recovered fines order 2014, and the 'batch process' recovered fines exemption 2014. As a consequence, operators who

¹ Recovered fines: a soil or sand substitute having a particle size of no more than 50 mm derived from the processing of construction and demolition waste or skip bins (stakeholders can provide input into this definition during consultation).

wish to produce recovered fines for land application will need to meet individual specific resource recovery orders (issued by the EPA for a specific processing facility). Consumers who wish to land-apply recovered fines will need to meet individual specific resource recovery exemptions. It is also proposed that the EPA introduce a new recovered fines specification for use as daily cover at landfills and a levy deduction for that use.

4.2 Submissions overview

The proposed C&D waste industry reforms were the subject of the highest number of submissions (22 submissions). In general, the submissions were supportive of the proposed amendments. However, there was confusion around the geographical area where the new draft standards would be applied, such as the MLA or the Regional Levy Area (RLA). There was also support for the development of guidance around the new draft standards for waste, with industry input. There were concerns around the associated costs of implementation, infrastructure and labour.

The introduction of resource recovery targets was referenced in 15 submissions, which included support, but also concern, for the unintended consequences which may result from the implementation of mandatory resource recovery targets.

4.3 Main issues raised

Submission	Response
<p>Who do the changes apply to?</p> <p>The EPA should provide clarity around what facilities and scheduled activities within the MLA will be subject to the mandatory requirements and outline any intention to extend these to the RLA.</p>	<p>Scheduled waste facilities within the MLA that have received more than 6000 tonnes of C&D waste and are licensed or are required to be licensed for resource recovery, waste processing and/or waste storage (C&D Facilities) will be required to implement the inspection, sorting, and storage requirements stipulated in the draft standards.</p> <p>The draft standards will also apply to facilities in the RLA that receive more than 6000 tonnes of C&D waste from the MLA and are licensed or are required to be licensed for resource recovery, waste processing and/or waste storage (C&D Facilities). They will be required to implement the inspection, sorting, and storage requirements stipulated in the draft standards.</p> <p>Facilities that receive a mix of commercial and industrial (C&I) waste and C&D waste will need to comply with the requirements on each load of waste that contains C&D waste, including those loads that also contain C&I waste.</p> <p>Loads containing a single waste type will be exempt from the sorting requirements; this is outlined in the draft standards. However, the other requirements, such as inspection and storage will still need to be implemented.</p>
<p>Timing</p> <p>The commencement date of 1 March 2017 is not reasonable for such a change due to the additional costs and resources required.</p>	<p>The proposed changes come into effect six months after the date on which the new laws are published.</p>

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<p>Guidelines and definitions</p> <p>The EPA should develop the standards with input from an industry working group and these should be released as soon as possible. The standards should define:</p> <ul style="list-style-type: none"> • processing • spread • surface • mixed loads • contaminants. 	<p>The EPA has established an industry working group.</p> <p>Key terms used in the draft standards have been defined in the draft standards and the Waste Regulation.</p>
<p>Inspection procedures</p> <p>A number of submissions raised concerns around the requirement to inspect at the weighbridge and the limited capacity to identify contaminants and asbestos while the waste is in the vehicle.</p>	<p>C&D Facility operators will be required to conduct an initial inspection at the weighbridge upon entry to the premises. This inspection may be carried out by an inspector on an elevated platform or via video from the weighbridge office. This is intended to be an initial assessment only.</p>
<p>Sorting procedures</p> <p>The EPA should provide more clarity around the sorting of loads, including segregated loads, as well as the materials permitted/not permitted to be sent off site for disposal and/or further recovery or reuse.</p>	<p>The draft standards provide details of the sorting requirements at C&D Facilities.</p>
<p>Grants and funding</p> <p>The training requirements and labour required to fulfil the standards will be an added cost to industry. There should be more funding for small/medium-size businesses to assist in improving recycling rates.</p>	<p>Grant opportunities are advertised on the EPA's website.</p> <p>Grant opening notifications are sent out by waste updates. To sign up, send an email with the word 'subscribe' in the subject line to waste.updates@epa.nsw.gov.au.</p>
<p>Generation site</p> <p>The EPA should also focus on generators and improving waste segregation/sorting at source. This should include education and registered recyclers linked to waste types.</p>	<p>The EPA acknowledges that better waste management practices should be occurring at the point of generation at building and demolition sites. This is a focus of future EPA projects.</p>
<p>Asbestos</p> <p>Asbestos concealed in loads is still a problem. Procedures for storage and removal are still unclear and may require licence variations to allow waste facilities to store asbestos temporarily.</p>	<p>C&D waste will be managed in line with the draft standards and as a result the likelihood of asbestos being accepted at the facility should be reduced. The EPA is continuing to work on the asbestos protocol and will communicate outcomes to industry. The EPA has engaged an occupational hygienist who will provide advice on the draft asbestos protocol. The protocol will complement requirements in the legislative framework.</p> <p>Licensees are required to manage asbestos waste in line with legal requirements.</p>
<p>Storage</p> <p>Storage space is limited and the requirement to have a high number of storage bays will be a significant added cost to business.</p>	<p>C&D Facilities should have sufficient and appropriate space to store the waste types they receive. This should be standard practice for legitimate operators.</p> <p>Facilities may need to adjust their business model and/or waste types to ensure they have sufficient storage space for waste types.</p>

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Submission	Response
<p>Penalty amounts</p> <p>The penalty amount for breaches of the standards and the resource recovery targets are too low in comparison to the profits that will be made.</p>	<p>The proposed penalty notice amount for the breach of the standards is \$7,500 for an individual and \$15,000 for a corporation. A breach of the draft standards may also be dealt with by way of court proceedings which, if successful, can result in significantly heavier penalties.</p>
<p>Resource recovery targets</p> <ul style="list-style-type: none"> • One resource recovery target should apply to all relevant facilities to create a level playing field and avoid facilities operating to meet the 50% target as opposed to the 75%. • The resource recovery targets create risk by encouraging facilities to reject loads that contain lower recycled content, reducing a facility's ability to meet their resource recovery target. • The EPA should clarify how the resource recovery targets and standards will apply to waste storage facilities. • Facilities that are owned by the same company should be able to combine their resource recovery percentages. These are generally set up as a network, meaning infrastructure may be limited at one facility and more developed at another, and suitable for secondary recycling. • A defence or time extension should be considered in the event that a licensee has plant failure. • Recycling at B&D sites is a growing trend, meaning licensed recycling facilities are increasingly receiving the light fraction of the waste stream, which would make it harder for facilities to reach their resource recovery targets. 	<p>The EPA has considered the submissions and feedback provided during the industry forums and has decided not to proceed at this time with the implementation of resource recovery targets.</p> <p>Application of resource recovery targets are complex and there are many factors within the waste industry that could impact the implementation and effectiveness of these targets. The EPA decided following consultation that further analysis and assessments need to be undertaken, to minimise the risk of potential negative outcomes for the environment, community and businesses.</p>
<p>Intermodal facilities</p> <ul style="list-style-type: none"> • Intermodal facilities do not undertake activities that require inspection and sorting procedures. A new scheduled activity should be developed to accurately reflect the processes and risks at intermodal facilities. • 18 months is needed to obtain a licence and implement the standards. 	<p>The requirement for intermodal terminals to be licensed already exists within the POEO Act Schedule 1. This amendment is confirming the current requirement and makes it even clearer. Intermodal facilities carrying out waste storage activities should already have received the necessary planning approvals prior to commencement.</p> <p>The POEO Act currently allows a transitional period of nine months for compliance with licensing (by regulations). Given this, an 18-month licensing period is considered unreasonable by the EPA.</p>

Submission	Response
<p>Recovered fines</p> <ul style="list-style-type: none"> • The new recovered fines daily cover specification should have an increased sieve size to ensure the material is suitable for use as daily cover. • The EPA should provide further detail around what conditions need to be met in order to produce recovered fines, and who will be permitted to use them. • There is also a need for a general recovered fines exemption with limited land application uses. • The production costs including the rigorous testing of recovered fines for daily cover will need to be low enough to economically replace the use of VENM as daily cover. • The EPA would need to impose a limit on the amount of recovered fines received for use as daily cover at landfills. A limit of 25% of the waste received per month was suggested which could be reported through the Waste Contribution Monthly Report. 	<p>The EPA has conducted a recovered fines trial with representatives from industry to develop the specification for the use of recovered fines as an alternative daily cover at landfills.</p> <p>The recovered fines material will need to meet the required outcomes for daily cover as detailed in the 2016 <i>Environmental Guidelines: Solid waste landfills</i>.</p> <p>The new specification will take into account the production costs, with the aim of making it a cost-effective option for producers and landfill operators.</p> <p>A limit on the amount of alternative daily cover recovered fines allowed at a landfill is being considered.</p> <p>The EPA will provide information to industry about the recovered fines specification for daily cover production and use.</p> <p>The EPA has proposed a concessional contribution rate for the use of recovered fines as daily cover at a scheduled waste disposal facility.</p>

5 Improving performance at landfills

5.1 Amendments proposed for consultation

Introduction of two new offences for landfills: offence to exhume waste from a landfill and offence for a landfill to send a mixed load of waste from the landfill if the facility can lawfully accept that waste.

The Consultation Paper outlined the definition of a mixed load of waste to be any load containing:

- a mix of different waste types (including specific waste types set out in Table 3.1 of the EPA [Waste Levy Guidelines](#))
- any unprocessed B&D waste (as defined in Schedule 1 clause 50 of the POEO Act)
- asbestos waste (as defined in Schedule 1 clause 50 of the POEO Act).

Defences will be available in certain circumstances: if the occupier of the relevant landfill is unable to comply because of an emergency, EPA direction or approval, or if they are acting as required by law.

Penalties for non-compliances were proposed at \$15,000 for corporations and \$7500 for individuals. Significant penalties of up to \$44,000 may be imposed by a court on conviction for this offence.

5.2 Submissions overview

A total of 18 submissions made comments and recommendations on the proposals. Five of these submissions were supportive of the changes while eight provided recommendations for improvements in the application of the changes. The remaining 13 submissions provided comments on the proposals but it was not clear whether they supported the proposed new offences for landfills.

5.3 Main issues raised

Submission	Response
<p>Offence to exhume waste from a landfill</p> <p>The definition of exhuming waste is unclear. Submissions questioned if the definition of exhuming waste applies to waste removed from the landfill but that has not left the site.</p> <p>Landfill operators outlined that waste is exhumed and moved as part of day-to-day operations and this should not be included in the offence; the offence should only apply to waste exhumed and sent off site.</p>	<p>It will be an offence for an occupier of land that is or was a landfill site to fail to ensure that waste is not exhumed from the land whether or not that waste is sent off site. It is proposed that the offence does not apply to works that are authorised by the EPL, or in the case of unlicensed landfills, works authorised by the EPA in writing, and the EPA has been notified prior to starting.</p> <p>It is a defence where waste is exhumed:</p> <ul style="list-style-type: none"> • in an emergency to protect human health or the environment; or • in accordance with the direction of the EPA or as otherwise required or authorised by law. <p>This clause does not affect the operation of a scheduled waste facility operating on a closed and capped landfill where no waste is removed from beneath the cap.</p>
<p>Landfill operators wanted to know what activities are required to get EPA approval and what the approval process would be. Activities outlined in submissions include: infrastructure management, landscaping and forming for closure, remediation and decontamination.</p> <p>Seven submissions stated that the EPA approvals should only be for extraordinary works requiring the exhumation of waste and not for exhumation works that are already approved.</p>	<p>The clause does not apply where waste is exhumed as a consequence of works authorised;</p> <ul style="list-style-type: none"> • in writing by the EPA; or • by an EPL <p>where such works are notified to the EPA at least two days in advance or as otherwise required in writing by the EPA.</p>
<p>Offence to send a mixed load of waste from the landfill facility</p> <p>Four submissions requested further clarification on the definition of mixed waste.</p>	<p>It will be an offence for a licensed waste disposal facility to transport any waste from that facility. This does not apply if the waste:</p> <ul style="list-style-type: none"> • is transported in an emergency to protect human health or the environment; • is transported in accordance with a direction from the EPA or as required or authorised by law; • consists only of metals and is transported for further processing or recovery; or • consists of VENM only.
<p>Seven submissions recommended that the offence should not include mixed waste sent off site for recovery. Examples provided in submissions were mattresses, timber, large concrete pieces and metals.</p>	<p>The offence will not apply to the situations noted above.</p>

Submission	Response
<p>Regional council submissions outlined concerns about the application of the offence to regional landfills not currently accepting waste or not able to accept waste for disposal. Situations presented include:</p> <ul style="list-style-type: none"> • a site with a new landfill cell in the planning process and operating on a contingency management plan sending waste to another disposal facility • landfills that act as transfer stations for recoverable wastes that are then sent for further processing, including B&D waste, and • regional landfills that need to stockpile materials in larger quantities for transport and to attract buyers. 	<p>The proposal will mean that some landfills in regional areas may breach the law if they continue operating in the same way. However, the EPA is open to discussing specific situations with individual landfill operators as required, to avoid undue burden on them.</p>

6 Improving handling of asbestos waste

6.1 Amendments proposed for consultation

Asbestos transport

Clause 78 of the Waste Regulation will be clarified to require that loads of asbestos waste must be fully covered and leak-proof during transportation. In addition, if a load of asbestos waste is:

- bonded asbestos, it must be securely packaged
- friable asbestos (asbestos which can be crumbled, pulverised or reduced to powder by hand pressure), it must be kept in a sealed container
- other asbestos waste, including asbestos-contaminated soils, it must be wetted down.

Asbestos disposal

Clause 80 of the Waste Regulation will be amended so that:

- the occupier of the landfill must prevent dust from being generated from the asbestos waste and prevent any dust in the waste from being stirred up – this is in addition to the requirements on the person disposing of asbestos waste at a landfill
- the EPA can provide written authorisation for landfills (licensed and unlicensed) to use alternative cover material for asbestos waste – that is, material other than VENM.

Penalties for breaching any of these requirements, or requirements to ensure that asbestos waste does not escape from a vehicle (under clause 78 of the Waste Regulation), will amount to \$15,000 for corporations and \$7500 for individuals, irrespective of whether the council or the EPA is the relevant regulatory authority. This aligns with the increase in penalty notice amounts introduced in May 2014.

6.2 Submissions overview

A total of 15 submissions were received on the changes to asbestos handling. Eleven made recommendations on the proposals and five submissions supported the changes. Two submissions were unclear whether they supported or did not support the changes.

6.3 Main issues raised

Submission	Response
The need for NSW agencies responsible for asbestos management to continue to work together to ensure consistency and enforcement of requirements.	The EPA recognises the importance of working with other government agencies in this area. EPA and SafeWork NSW, with other agencies, are participants in the NSW Heads of Asbestos Coordination Authorities (HACA). This group works to improve the management, monitoring and response to asbestos issues in NSW by developing coordinated prevention programs.
Submissions requested the use of general solid waste for asbestos cover, details of the approvals process and content of regulations.	The EPA is working with industry to investigate options for alternative cover of asbestos. The results of this work will be communicated to industry and community.
The EPA's draft asbestos protocol should be finalised and released.	The EPA is continuing to work on the asbestos protocol and will communicate outcomes to industry. The EPA has engaged an occupational hygienist who will provide advice on the draft asbestos protocol. The asbestos protocol will complement requirements in the legislative framework.
Concerns about a lack of enforcement through the chain from removalists, transporters and disposal.	The EPA is the regulating authority for the safe transportation of asbestos waste and its disposal at appropriate landfill facilities. SafeWork NSW and councils regulate the removal of asbestos. Anyone with concerns about the transport and disposal of waste containing asbestos can report it to the EPA's Environment Line on 131 555.

7 Transported waste deductions

7.1 Amendments proposed for consultation

Waste facilities claiming a transported waste deduction will be required to provide evidence that the receiving facility is lawful and is using the waste for the stated purpose of the transported waste deduction. This applies to resource recovery, waste processing, waste storage and intermodal facilities. This includes proving the receiving facility has the required planning consent, environmental approvals, such as an EPL, and providing evidence that the recipient has received the same waste.

Scheduled waste disposal facilities may only claim a transported waste deduction on waste sent for lawful recovery or recycling. Landfills will not be able to claim transported waste deductions for exhumed waste or waste for disposal at another facility.

7.2 Submissions overview

A total of 14 submissions provided comments relating to the transported waste deduction changes. Four submissions were supportive of the proposed changes and four provided suggestions. The remaining submissions did not expressly support or oppose the changes; most requested more information about how the onus of proof will operate.

7.3 Main issues raised

Submission	Response
<p>Many submissions requested further details on how the onus of proof will operate and how compliance can be demonstrated. Stakeholders requested this to be straightforward and not onerous. Four stakeholders said that the records for onus of proof are standard practice and this does not place an undue burden on facilities.</p>	<p>The Waste Regulation will include details of how the onus of proof records will operate. Waste processing, waste storage and resource recovery facilities will have a maximum of 12 months to claim a transported waste deduction.</p>
<p>Council submissions outlined concerns about the application of the requirements to regional landfills not currently accepting waste for disposal and operating as transfer stations (sending material off site for disposal or recovery).</p>	<p>The EPA is open to discussing specific situations with individual landfill operators as required.</p>
<p>Stakeholders wanted to know how the following would be addressed:</p> <ul style="list-style-type: none"> a) rejected loads, b) material accepted (but not landfilled) and sent for recycling or recovery, c) landfills being rehabilitated for use, and d) landfills not able to accept waste for disposal (due to approvals or operations). 	<p>The obligation to maintain a rejected loads register is unchanged.</p> <p>A transported waste deduction can only be claimed by a scheduled waste disposal facility if: (a) the waste is transported in an emergency to protect human health or the environment, (b) the waste consists only of metals and was transported for further processing or recovery; (c) the waste consists only of virgin excavated natural material within the meaning of Schedule 1 to the Act.</p> <p>The EPA is open to discussing specific situations with individual landfill operators as required.</p>
<p>Stakeholders wanted clarification of the waste types the changes to transported waste deductions apply to and requested the ability to claim a transported waste deduction to be linked to a C&D waste facility's resource recovery rate and location in NSW.</p>	<p>The EPA confirms that the changes to the transported waste deductions apply to all wastes. Transported waste deductions are not an enforcement mechanism and cannot be used to respond to non-compliances with requirements of the Waste Regulation.</p> <p>It is not possible for the EPA to restrict the claiming of transported waste deductions to the receiving facility's location (such as within NSW only).</p> <p>The Waste Regulation will also introduce the ability for the EPA to require an occupier to engage an independent, EPA-approved person to conduct an audit on deductions claimed.</p>

8 New eligible operational purpose deductions

8.1 Amendments proposed for consultation

Levy-liable waste facilities are able to seek approval for the operational use of certain waste or waste derived materials. The facility can then claim a deduction from the levy for these materials. The EPA proposes to expand the list of materials to include suitable materials for use as a bedding layer and for certain waste materials used as biofilter media to minimise emission and odour at resource recovery facilities, such as alternative waste treatment facilities.

8.2 Submissions overview

The EPA received nine submissions regarding operational purpose deductions of which all were in support of the proposed amendments.

8.3 Main issues raised

Submission	Response
<p>The following should also be considered as eligible for operational purpose deductions:</p> <ul style="list-style-type: none"> • groundwater depressurisation systems • clay to manage leachate and stormwater during the construction and operation of landfill cells • landfill gas and leachate infrastructure construction materials including gravel, clay and bentonite. 	<p>The EPA welcomes further suggestions to expand the number of eligible waste types and materials for operational purpose deductions. To progress assessment of these materials, the EPA would require supporting evidence including examples where this infrastructure is used and the type and amount of materials generally used.</p> <p>Stormwater management infrastructure and media are already eligible for operational purpose deductions under clause 15 of the Waste Regulation.</p>
<p>The use of recovered fines as a bedding layer was not addressed in the Consultation Paper.</p>	<p>The EPA has not considered recovered fines as a bedding layer. Once the requirements for the alternative daily cover of recovered fines is specified, the suitability of using recovered fines as a bedding layer will be considered. See page 11 for more information on daily cover.</p>

9 Clarifying the application of the waste levy at resource recovery facilities

9.1 Amendments proposed for consultation

Levy payment at resource recovery, waste storage and waste processing facilities

The Waste Regulation will be amended (clause 10B) to clarify that a levy-liable waste facility's obligation to pay the waste levy occurs only when trigger events happen.

The levy rate for excess waste, or waste on site for more than 12 months, is the MLA rate

for facilities in the MLA, and the RLA rate for facilities elsewhere in NSW (being the relevant rates applied when the waste is received). No concessional rates will be applied. The levy is not payable twice on the same waste, or for material used for an operational purpose approved under clause 15 of the Waste Regulation.

Where a waste levy is paid, it will be refunded when that waste is sent off site to a lawful facility. The refund is based on the amount the occupier paid the EPA for that waste. Refunds cannot exceed the amount paid.

Levy liability is not extinguished if the occupier goes into administration, receivership or liquidation, or has their licence revoked, suspended, or transferred to another company.

Shredder floc and virgin excavated natural material rates

The concessional levy rates for shredder floc and VENM (clause 12 of the Waste Regulation) will continue to apply at landfills. The Waste Regulation will be changed to clarify that the concessional rates do not apply at resource recovery, waste storage or waste processing facilities.

Levy rate rounding and interest

Clauses 11 and 12 of the waste regulation will be amended to ensure that all rounding of the levy – no matter what levy rate applies – will be to the nearest 10 cents (five cents to be rounded up).

Clause 25 of the Waste Regulation will also be amended so that interest will no longer be calculated as compound interest.

9.2 Submissions overview

A total of eight submissions provided comments on the clarification of the levy at resource recovery, waste storage or waste processing facilities. Four submissions supported the clarifications, two had suggestions about the levy, one welcomed keeping concessional levy rates for landfills, and three stated there was no impact from these clarifications and changes.

The submissions raised two issues: administration and liquidation of waste facilities' customers and its impact on levy payments, and suggested changes for the way the NSW levy operates.

9.3 Main issues raised

Submission	Response
<p>One submission raised concerns about the costs waste facilities cover when customers fail to pay accounts, or go into administration or liquidation. This submission suggested the waste facility should be refunded the levy costs.</p>	<p>The waste levy is a policy mechanism to encourage recycling and recovery of waste and avoid waste disposal to landfill. The intent of the waste levy does not change when business conditions change. A waste facility's business plan should take into consideration the risks of their operations, including customers defaulting on payments.</p>

10 Monitoring waste at licensed facilities

10.1 Amendments proposed for consultation

Waste facilities licensed only for resource recovery, waste processing (non-thermal treatment) or waste storage will no longer be required to undertake a mandatory annual volumetric survey.

The EPA will have the power to estimate the amount of waste at the facility if it reasonably suspects that the waste is subject to mass loss or gain at the facility.

Clause 39 of the Waste Regulation will now clarify that the written notice issued by the EPA will specify the manner in which video-monitoring systems are to be installed, operated and maintained. This clause will also be amended to clarify that the occupier must ensure that any installed video-monitoring system is not tampered with, damaged or destroyed, and that the video-monitoring records are to be kept for six years.

Resource recovery facilities that receive only hazardous waste, non-trackable liquid waste, restricted solid waste or clinical and related waste will not be required to install a weighbridge.

10.2 Submissions overview

The EPA received 14 submissions with general support for the proposed amendments, however, there were objections to the proposed six-year video-monitoring data record keeping requirement.

10.3 Main issues raised

Submission	Response
Clarification sought on how levy calculations in relation to moisture loss from recycled organic materials will be addressed through the proposed reforms.	The EPA will work closely with individual facilities during the development of any mass loss calculations relevant to the waste received on site.
The six-year video data recording timeframe is excessive and not practical.	The EPA has considered the issues raised about video-monitoring and has reduced the requirement to keep video-monitoring records to three years.

11 Waste transport

11.1 Amendments proposed for consultation

Removal of the proximity principle offence

Repeal the proximity principle offence in clause 71 of the Waste Regulation.

Penalties for remixing of waste

Clarify that transporters must not re-mix loads that have already been sorted or segregated by a waste facility, or otherwise separated for recycling. Fines for a penalty notice for a breach of any of these requirements will amount to \$15,000 for corporations and \$7500 for individuals.

Penalties for not reporting interstate transport of waste

New penalties for not reporting on loads of waste transported from a waste facility within the regulated area, that is licensed or required to be licensed, to another state or territory will amount to \$7500 for corporations and \$3750 for individuals.

Penalties for not covering trackable waste

Penalty notice amounts will be increased to \$15,000 for corporations and \$7500 for individuals for breaches of requirements to ensure trackable waste is covered and does not escape from a vehicle (under clause 78 of the Waste Regulation).

11.2 Submissions overview

A total of 15 submissions addressed the changes to waste transport. Five of the submissions supported the repeal of the proximity principle. Five submissions did not support the repeal of the proximity principle and five submissions made suggestions for the management of waste transport in NSW. The majority of submissions supporting the change did so due to the difficulties in enforcement and the need for a national approach.

11.3 Main issues raised

Submission	Response
<p>The majority of submissions' support for the repeal of the proximity principle was given in recognition of the enforcement challenges. Support and encouragement was given for a national approach to the waste transport issue. Suggestions for the development of a national approach include participation from national waste industry associations, introduction of a national proximity principle and a national market-based price signal on waste sent to landfill. Two submissions supported the repeal for the benefits to business. A number of submissions acknowledged the costs to businesses that did comply with the proximity principle.</p>	<p>The proximity principle offence was introduced in the Waste Regulation to address the environmental and human health risks from the long-haul transport of waste. The proximity principle was one regulatory tool used to address these risks, but enforcement is challenging and new tools are needed to address the continued transport of waste.</p> <p>The EPA will continue to use existing regulatory tools in the Waste Regulation to mitigate the environmental impacts associated with the transport of waste. This includes ensuring that loads of waste are covered, and that relevant waste operators are licensed and have taken steps to minimise the risks of spills, contamination, leakage and unnecessary human exposure to asbestos and other contaminants.</p> <p>The EPA will continue to investigate new and additional regulatory tools to encourage the local management of waste and address the risks of transported waste. This includes a national approach and inter-jurisdictional cooperation and campaigns.</p>
<p>The five submissions that did not support the repeal did so on the basis that the intent of the proximity principle is good, it aligns with waste management hierarchy and addresses environmental concerns related to the transport of waste. One of these submissions requested the expansion of the proximity principle to ocean and rail transport.</p>	<p>The EPA will continue to encourage the local management of waste through the national approaches and continued efforts in NSW.</p> <p>The EPA will continue to investigate and action opportunities for cross-jurisdictional collaboration during the investigation into national mechanisms to encourage the local management of waste.</p>

Submission	Response
<p>Three submissions included a number of suggestions for how waste transporters could be incorporated into the waste levy system or chain of custody for waste. Suggestions included waste transporter registrations, transport licences, making waste transporters responsible for levy payments, using licensing and GPS tracking and applying the levy no matter which state or territory the waste is disposed in.</p>	<p>The EPA will continue to investigate new and additional regulatory tools across the waste management chain to encourage the local management of waste and address the risks of transported waste.</p>
<p>A few submissions requested clarification of the proposed repeal of the proximity principle, the requirements for interstate transport reporting in the RLA and how regional landfills transporting waste interstate will be impacted by the changes.</p>	<p>The changes to the transport of waste have no impact on the reporting requirements for waste transported from the MLA. No requirements are being introduced for interstate transport reporting from the RLA.</p> <p>The repeal of the proximity principle will mean regional landfills transporting waste to other jurisdictions will no longer need to comply with a transport limit of 150 kilometres. However, new landfill and transported waste deduction requirements will apply.</p>

Penalties have been maintained at their current rates to ensure consistency with similar offences in the legislative scheme.

12 POEO General Regulation: changes to land pollution offence

12.1 Amendments proposed for consultation

Clause 109 of the General Regulation will be amended to clarify that on-site land application of hazardous waste, restricted solid waste, more than 10 tonnes of asbestos waste and more than five tonnes of (or 500) waste tyres will not automatically constitute land pollution.

12.2 Submissions overview

All submissions received were in support of this amendment.

13 POEO Act Schedule 1: changes to licensing requirements

13.1 Amendments proposed for consultation

The EPA has proposed changes to licensing requirements to provide clarity regarding which facilities (on the basis of risk) are required to hold an EPL and which are not. These changes are required to ensure that the EPA's regulatory resources are allocated appropriately to facilities that pose the most environmental risk.

Timber-cutting yards

Facilities receiving only untreated timber from off site and processing this wood by cutting, splitting or otherwise reducing into small components (other than by chipping) for the purpose of being sold as firewood will not be required to be licensed under clauses 34, 41 and 42 of Schedule 1 of the POEO Act.

Waste storage facilities

Facilities will be required to be licensed for waste storage (clause 42) if waste is received from off site, stored, transferred from one vehicle to another, or unloaded from a vehicle (including rail). This includes intermodal facilities.

Energy recovery facilities

Clarifications to be included about the need for resource recovery exemption from licensing as a thermal disposal facility (clause 40) for facilities required to be licensed as energy recovery facilities (clause 18).

Biosolids

The definition of organics (clause 50) will be amended to clarify that the only biosolids defined as putrescible organics are unstable or untreated biosolids.

13.2 Submissions overview

Eight submissions were received about the changes to Schedule 1 licensing requirements. Two supported the changes to waste storage facilities, one provided a suggestion for waste storage requirements and six submissions were unclear if they supported or opposed any of the changes to licensing requirements. Three submissions requested more information on the proposed changes to all the licensing requirements.

13.3 Main issues raised

Submission	Response
<p>Timber-cutting yards</p> <p>One submission raised questions about whether urban timber residues are included in the changes to the timber-cutting yard licensing.</p>	<p>Firewood-cutting yards that are processing solely untreated timber, and not chipping wood, have been identified as a facility type that should be excluded from licensing requirements as they pose low environmental risks. Facilities processing urban timber wastes are likely to be processing a range of timbers including treated and preserved timbers and the timber would not be appropriate for use as firewood. Processing of treated and preserved timber presents a higher risk to the environment and human health. Facilities processing a mix of treated and untreated timber will still be required to be licensed.</p>
<p>Waste storage facilities</p> <p>The changes to the waste storage licence requirements are supported as they work towards a level playing field for the sector.</p>	<p>NA</p>
<p>Waste storage facilities</p> <p>One submission raised concerns about the time periods for a facility to be issued an EPL and suggested greater transparency of the licence assessment process.</p>	<p>Facilities that require an EPL as a result of these changes will have time to apply for a licence (as per the General Regulation, clause 47). The licensing requirement applies to all areas of NSW and is not limited or differentiated between metropolitan or regional areas.</p> <p>The licence application assessment process is detailed in clause 45 of the POEO Act (matters to be taken into consideration in licensing functions). The licensing process is also detailed in the EPA's Guide to Licensing and information about the risk-based licensing process can be found on the EPA website.</p>

Consultation report on the changes to the regulation of waste in NSW

Submission	Response
<p>Waste storage facilities</p> <p>One submission suggested a new licensing category for waste storage – road or transport – as the one-size-fits-all approach is not suitable.</p>	<p>The creation of a new licensing category and introduction of associated administrative requirements is a considerable process. The need for a new category is not currently evident, as road and rail facilities storing waste (intermodal facilities) are currently required to be licensed and a licensing category exists for that activity.</p>
<p>Waste storage facilities</p> <p>Regional council submissions requested clarification on the impact of the licensing changes to regional waste facilities.</p>	<p>The licensing requirements will apply to regional waste facilities if the facility accepts waste on site for storage, or transfers waste from one vehicle to another, or unloads waste from a vehicle.</p>
<p>Energy recovery facilities</p> <p>No submissions were received on this specific change.</p>	<p>NA</p>
<p>Biosolids</p> <p>One submission questioned what the impact of the definition change will be for facilities handling biosolids and/or putrescible wastes.</p>	<p>The proposed amendments clarify that only unstable or untreated biosolids are defined as putrescible organics.</p> <p>This will only impact those facilities accepting unstable or untreated biosolids within the licensing thresholds of activities impacted by the definition.</p>