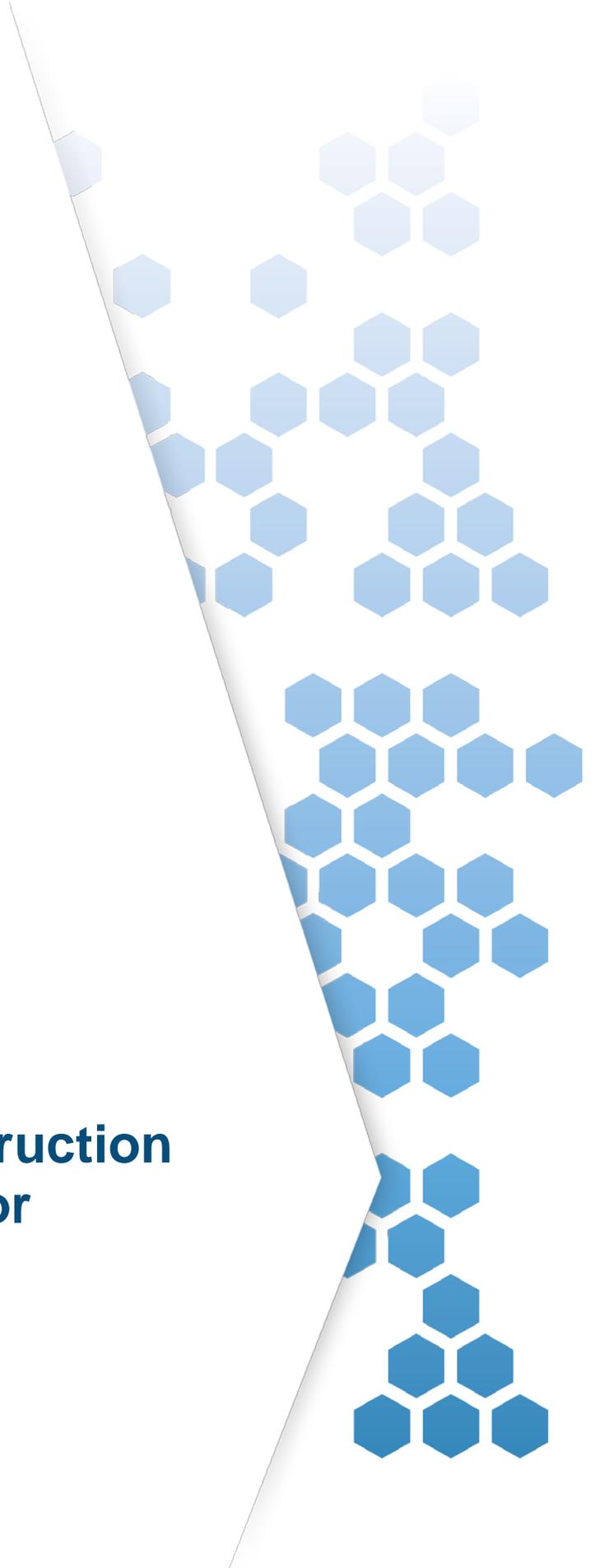


Reforms to the construction waste recycling sector

Explanatory paper



© 2017 State of NSW and Environment Protection Authority

With the exception of photographs, the State of NSW and Environment Protection Authority are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

The Environment Protection Authority (EPA) has compiled this document in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs. This document may be subject to revision without notice and readers should ensure they are using the latest version.

All content in this publication is owned by the EPA and is protected by Crown Copyright, unless credited otherwise. It is licensed under the [Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#), subject to the exemptions contained in the licence. The legal code for the licence is available at [Creative Commons](#).

The EPA asserts the right to be attributed as author of the original material in the following manner:
© State of New South Wales and the Environment Protection Authority 2017.

Published by:

Environment Protection Authority
59 Goulburn Street, Sydney NSW 2000
PO Box A290, Sydney South NSW 1232
Phone: +61 2 9995 5000 (switchboard)
Phone: 131 555 (NSW only – environment information and publications requests)
Fax: +61 2 9995 5999
TTY users: phone 133 677, then ask for 131 555
Speak and listen users: phone 1300 555 727, then ask for 131 555 Email:
info@environment.nsw.gov.au
Website: www.epa.nsw.gov.au

Report pollution and environmental incidents
Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au
See also www.epa.nsw.gov.au

ISBN 978 1 925688 34 4
EPA 2017P0316
October 2017

Contents

| | |
|---|---|
| What is the problem? | 1 |
| Consultation to date | 1 |
| How is the proposed regulation different from what was originally proposed? | 2 |
| Draft Protection of the Environment Operations Legislation Amendment (Waste) Regulation 2017 | 5 |
| Draft standards | 5 |
| Why are we making these changes?..... | 6 |
| The changes will help NSW meet objectives and targets | 6 |
| Poor construction waste management | 6 |
| Waste Less, Recycle More investment..... | 6 |
| International examples show this works | 6 |
| Invitation to comment..... | 7 |

What is the problem?

Three years ago, the NSW Government introduced the Protection of the Environment (Waste) Regulation 2014 (Waste Regulation), which substantially reformed and modernised the NSW waste industry. The reforms aimed to achieve the objectives of the Protection of the Environment Operations Act 1997 (POEO Act), including to protect the environment and reduce risks to human health. The reforms also aimed to provide a level playing field for waste operators and minimise illegal dumping and activities that distort the market, including excessive stockpiling.

The 2014 reforms led to significant improvements in the operation of most waste facilities, and improved the ability of the NSW Environment Protection Authority (EPA) to efficiently regulate the industry. However, numerous investigations, industry feedback and data analysis have revealed ongoing issues in the construction and demolition (C&D) waste sector.

The C&D waste sector has potential to return large volumes of recovered material into the economy and the environment. However, some operators in this sector have minimal environmental controls, poor processes and are not safely maximising recovery of resources from construction waste¹. These poor practices may expose the community and environment to risks from contaminated products and can lead to loss of valuable resources from our productive economy. The 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 EPA proposes that the NSW Government makes a number of changes to the waste regulatory framework in NSW to meet objectives of the POEO Act. These proposed changes complement existing waste policy, including the NSW Government's *Waste Avoidance and Resource Recovery Strategy 2014–21* (Waste Strategy) and significant investment in grants and funding opportunities through the NSW Government's *Waste Less, Recycle More* initiative (\$802 million over nine years).

Consultation to date

The proposed changes to the Waste Regulation, Schedule 1 of the POEO Act and the Protection of the Environment Operations (General) Regulation 2009 were outlined in a consultation paper ([Consultation Paper](#)) and released publicly for 28 days from 21 October to 17 November 2016.

The EPA held two industry forums during the consultation period and heard from C&D waste recyclers, consultants, building and development industry representatives, local government and peak industry bodies. The EPA also sent notification of the proposed changes to 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.

The Protection of the Environment Operations Legislation Amendment (Waste) Regulation 2017 (Draft Regulation) reflects the feedback received during consultation. The EPA has developed, with an industry working group, draft standards for managing construction waste

¹ Construction waste is defined in the draft Protection of the Environment Operations Legislation Amendment (Waste) Regulation 2017, clause 90A.

in NSW (draft standards). This is a document that is referenced in the Draft Regulation, and will have legal force.

How is the proposed regulation different from what was originally proposed?

This paper includes an explanation of critical elements of the proposed reform, in order to meet the requirements of a Better Regulation Statement. The table below sets out the key changes between the proposal in the Consultation Paper and the Draft Regulation. This Explanatory Paper should be read in conjunction with the [Consultation Paper](#).

| Item | 2016 proposal | Draft Regulation |
|--|---|---|
| <p>Construction and demolition waste industry reforms</p> | <p>C&D waste facilities that are licensed or required to be licensed, and receive C&D waste or building and demolition (B&D) waste and/or soils, masonry and ceramics will need to ensure:</p> <ul style="list-style-type: none"> • that minimum standards to inspect, sort, recover and responsibly handle C&D waste are complied with • that C&D waste from the MLA is properly processed before being landfilled. <p>C&D waste facilities will also be required to meet resource recovery targets depending on the scale of their operations.</p> <p>Reform of the production and re-use of recovered fines²:</p> <ul style="list-style-type: none"> • recovered fines meeting specifications will be able to be used: as daily cover at landfills; for land application if they meet the requirements of a resource recovery order issued by the EPA for a specific processing facility | <p>The draft standards will also apply to facilities in the Regional Levy Area (RLA) that:</p> <ul style="list-style-type: none"> • receive more than 6000 tonnes of C&D waste in any 12-month period from the Metropolitan Levy Area (MLA); and • are licensed or are required to be licensed for resource recovery, waste processing and/or waste storage. <p>The resource recovery targets will not be introduced at this stage.</p> <p>There will be a transitional period of six months for existing facilities to comply with the draft standards.</p> <p>The draft standards have been developed with an industry working group.</p> <p>The EPA has proposed a concessional contribution rate for recovered fines alternative daily cover. This rate applies</p> |

² Recovered fines: a soil or sand substitute having a particle size of no more than 50 millimetres derived from the processing of construction and demolition waste or skip bins (stakeholders can provide input into this definition during the consultation on the Draft Regulation).

| | | |
|--|---|---|
| | <ul style="list-style-type: none"> • continuous Process Recovered Fines Order 2014 and Batch Process Recovered Fines Order 2014 will no longer be in effect. | <p>only to recovered fines used as daily cover at a scheduled waste disposal facility that is authorised in the EPL to receive the recovered fines.</p> |
| <p>Improving performance at landfills</p> | <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. | <p>The EPA has further clarified the application of the exhuming waste offence. The offence does not apply if the waste is exhumed as a consequence of works authorised in writing by the EPA, or authorised by the EPL for the facility, and notified to the EPA in writing at least two days before the works commence.</p> <p>It will be an offence for licensed waste disposal facilities to transport waste from the facility unless the waste:</p> <ul style="list-style-type: none"> • is transported in an emergency to protect human health or the environment, or • is transported in accordance with a direction of the EPA or because transportation was otherwise required or authorised by law, or • consists only of metals and is transported for further processing or recovery, or • consists only of virgin excavated natural material within the meaning of Schedule 1 to the POEO Act. |
| <p>Improving handling of asbestos waste</p> | <p>Clarification of requirements for waste operators handling, transporting or landfilling asbestos.</p> <p>This includes increased penalties for non-compliance with asbestos transport and disposal requirements.</p> | <p>No changes to 2016 proposal.</p> |

| | | |
|---|--|--|
| <p>Transported waste deductions</p> | <p>Amendments to transported waste deductions, so that:</p> <ul style="list-style-type: none"> • for any facility, it must be proven that the waste has been sent to a lawful facility (including any intermediary facility) • for landfills, deductions are available only if the waste has not been exhumed and the facility can prove that the waste was not sent for disposal. | <p>Introduction of a maximum time of 12 months to claim a transported waste deduction.</p> <p>A deduction is not available for scheduled waste disposal facilities unless:</p> <ul style="list-style-type: none"> • the waste was transported in an emergency to protect human health or the environment • the waste consists only of metals and was transported for further processing or recovery • the waste consists only of virgin excavated natural material within the meaning of Schedule 1 to the Act. |
| <p>Monitoring of waste at levy-liable facilities</p> | <ul style="list-style-type: none"> • Removing requirements for resource recovery facilities to complete mandatory annual volumetric surveys. These facilities will only need to complete a volumetric survey or other stocktake when required by notice from the EPA. • Introducing a way for the EPA to pragmatically account for moisture loss in waste estimations. • 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 by which the EPA can require video-monitoring; clarifying that the video-monitoring system will not be able to be tampered with, damaged or destroyed; and that records are to be kept for six years. | <p>The EPA will work with facilities to develop mass-loss calculations.</p> <p>The requirement to keep video-monitoring records has been reduced to three years.</p> |

| | | |
|---|---|---|
| <p>Improved transport of waste</p> | <p>The following amendments were proposed:</p> <ul style="list-style-type: none"> • removal of the proximity principle offence • requirements for transporters not to re-mix loads that have been sorted at a waste facility • penalties for not reporting interstate transport of waste • increased penalties for unsafe transport of waste. | <p>The EPA is not introducing increased penalties for failure to report interstate tracking.</p> <p>Maintaining the penalties at current rates keeps them consistent with the penalties for similar offences in the legislative scheme.</p> |
|---|---|---|

Draft Protection of the Environment Operations Legislation Amendment (Waste) Regulation 2017

The Draft Regulation reflects the feedback received during consultation in 2016. It can be found on the [EPA's website](#). The EPA is seeking feedback on the Draft Regulation.

Draft standards

As previously noted, the Waste Regulation will also prescribe standards for managing construction waste in NSW.

The objectives of the draft standards are to:

- increase the quality and quantity of recovered construction waste in NSW
- minimise and control the risk of asbestos waste and other contaminants entering C&D facilities
- divert valuable resources from landfill back into the productive economy
- ensure waste-derived products being re-introduced into the economy are compliant with resource recovery orders and exemptions
- ensure the safe re-use of quality waste derived products.

They outline the mandatory minimum steps required for licensed C&D waste facilities. The mandatory minimum steps are to:

1. implement waste inspection requirements
2. implement the waste sorting requirements
3. implement the waste storage requirements
4. comply with transport requirements.

Compliance with the draft standards is mandated under the proposed Part 8A of the Draft Regulation.

The EPA is also seeking feedback on the draft standards.

Why are we making these changes?

The changes will help NSW meet objectives and targets

The changes in the Draft Regulation are designed to reduce risks to human health and the environment posed by the handling, processing and transport of construction waste in NSW.

These changes are consistent with:

- the objectives of the POEO Act
- the objectives of the EPA as set out under section 6 of the *Protection of the Environment Administration Act 1991*.

The changes work towards achieving the [EPA's Strategic Plan 2017-21](#) for improved environmental and human health protection, and innovative waste management.

The changes to landfill requirements are to ensure operations are consistent with existing guidelines and requirements. Specifically, preventing the exhumation of waste from landfills is consistent with the standards of the [EPA Environmental Guidelines: Solid waste landfills 2016](#), the minimum standards for landfills in NSW.

The NSW Government's [Waste Strategy](#) has set an 80% recycling target for C&D waste. The target for diversion of all waste from landfill is 75%. Legislating for improved processing of waste streams supports the Waste Strategy, diverts valuable resource from disposal back into the economy, and is consistent with the waste hierarchy enshrined in NSW legislation.

Poor construction waste management

The C&D waste sector has the potential to return large volumes of recovered material into the economy and the environment. There has been an increase of infrastructure and construction projects within Sydney, Wollongong, Newcastle and surrounds. This should result in increased recovery of materials from the C&D waste sector.

However, increases are not being seen and a number of operators in this sector have minimal environmental controls and poor processes. As a result, recovery of resources from construction waste is not being maximised. In addition, some of this construction waste is not being sorted for recovery and is transported for disposal in other jurisdictions. These poor practices and lack of sorting impacts the community and environment, exposing them to risks from contaminated products, and can lead to the loss of valuable resources from the productive economy.

Waste Less, Recycle More investment

The NSW Government's significant investment in grants and funding opportunities through the *Waste Less, Recycle More* initiative (\$802 million over nine years) is aimed at modernising and improving waste management in NSW, increasing recovery of waste, and ensuring NSW has the waste processing capacity that is needed in the future. The EPA has supported infrastructure and with this expects to see the rate of recovery from waste increasing.

International examples show this works

A number of other jurisdictions, including South Australia, Germany and Ireland, have introduced legislation and licensing requirements to maximise resource recovery from construction waste and regulate the on-site processing of this waste. This has led to higher resource recovery rates.

The EPA has commissioned an independent expert to review the costs and benefits of these changes.

Invitation to comment

Consultation on the Draft Regulation and on the draft standards on managing C&D waste will be open for four weeks. Details about how to provide feedback can be found on the [EPA's website](#).