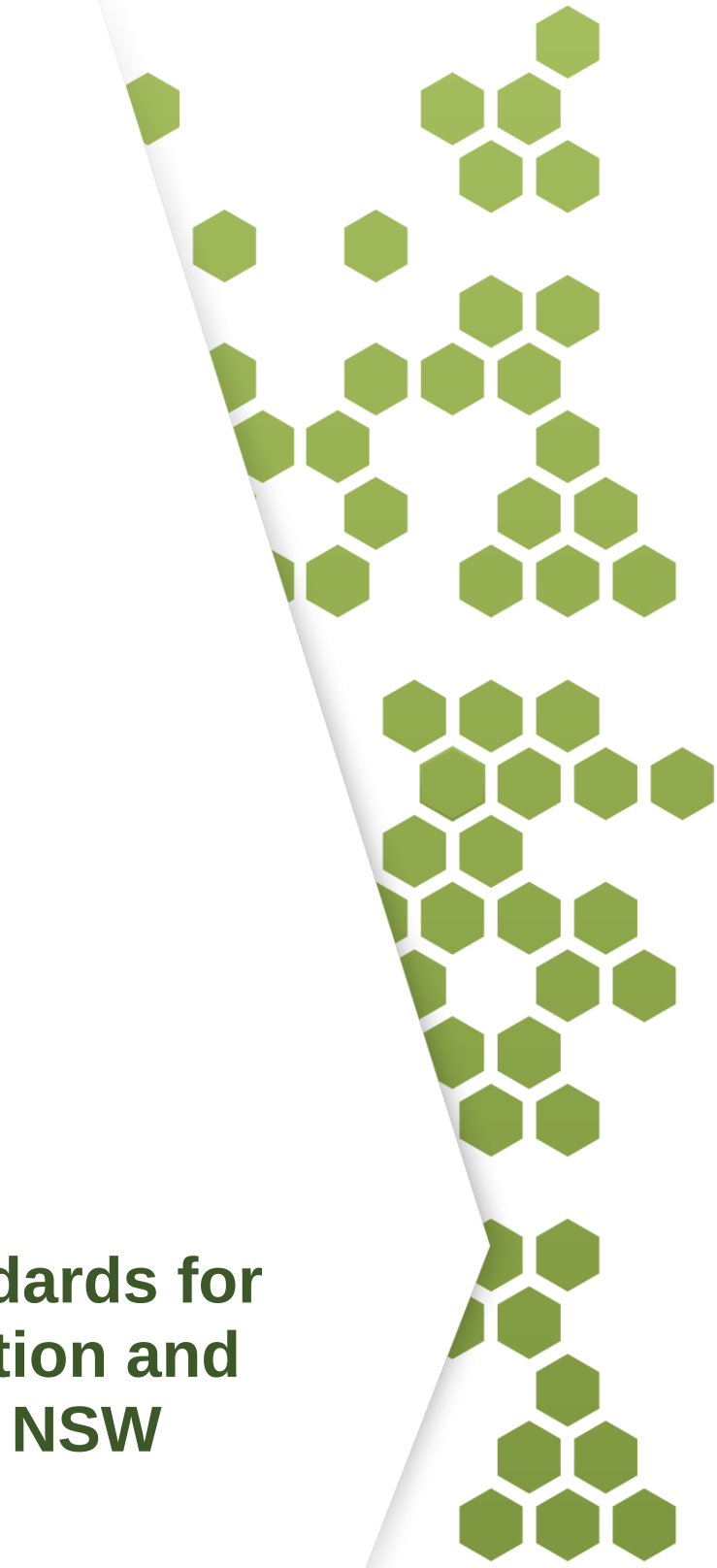

Consultation paper

New minimum standards for managing construction and demolition waste in NSW

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Contents

Summary

This consultation paper outlines the following changes proposed by the EPA to the management of waste in NSW:

Proposed reform	Details of reform to commence on 1 March 2017
Construction and demolition waste industry reforms	This will apply to construction and demolition 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. Requirements for: • minimum standards at licensed construction and demolition waste facilities to inspect, sort, recover and responsibly handle construction and demolition waste • construction and demolition waste from the metropolitan levy area to be properly processed before being landfilled. Reform of the production and re-use of recovered fines: • recovered fines meeting specifications will be able to be used as daily cover at landfills; they will also be able to be used for land application if they meet the requirements of a resource recovery order issued by the EPA for a specific processing facility • continuous Process Recovered Fines Order 2014 and Batch Process Recovered Fines Order 2014 will no longer be in effect.
Improving performance at landfills	Landfills in the regulated area will no longer be able to: • exhume waste • send mixed loads of waste off site for disposal.
Improving handling of asbestos waste	Clarification of requirements for waste operators handling, transporting or landfilling asbestos. This includes increased penalties for non-compliance with asbestos transport and disposal requirements.
Clarifying application of Transported Waste Deductions	Amendments to eligibility for Transported Waste Deductions, so that: • for any facility, the facility must prove 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.
New eligible Operational Purpose Deductions	New Operational Purpose Deductions for specific 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 the waste levy at resource recovery facilities.
Monitoring of waste at levy-liable facilities	Resource recovery facilities will not be required to undertake mandatory annual volumetric surveys. These facilities will need to do a volumetric survey or other stocktake only as and when required by the EPA by notice. Ability for the EPA to pragmatically account for moisture loss. Clarification 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. Clarification of the method by which the EPA can require video-monitoring.

Improved transport of waste	The following amendments will be made: • removal of the proximity principle offence • requirements for transporters not to re-mix loads that have been sorted at a waste facility • increased penalties for unsafe transport of waste.
Protection of the Environment Operations (General) Regulation 2009 (POEO General Regulation): changes to 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.
***Protection of the Environment Operations Act 1997* (POEO Act): licensing changes**	Clarification of waste licensing requirements for: • facilities at which waste is transferred between vehicles or modes of transport • facilities that receive biosolids • energy from waste facilities • woodchipping yards.

Your feedback

The NSW Government is seeking feedback on this consultation paper by **17 November 2016.** You can provide written feedback via the NSW Government Have Your Say website.

There will be an opportunity to provide feedback and seek further information at forums for the waste industry in Newcastle and Parramatta on 3 and 4 November.

These amendments to the waste regulatory framework are proposed to be legislated from **1 March 2017** and may be applicable to your organisation.

This consultation paper outlines the proposed amendments.

1. Introduction

The NSW Government implemented substantial reforms to modernise the NSW waste industry with the introduction of the Protection of the Environment (Waste) Regulation 2014 (Waste Regulation).

The 2014 reforms were designed 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 in New South Wales.

The reforms also aimed at providing a level playing field for waste operators, minimise illegal dumping and minimise activities that distorted the market, including excessive stockpiling.

To achieve these objectives, the 2014 reforms included:

- lowering licensing thresholds for waste processing, resource recovery and waste storage facilities, and introducing levy liability for those facilities to ensure that waste is appropriately handled and processed
- increased requirements for waste operators to report to the EPA, leading to improvements in data, improved understanding, and more targeted regulation of the waste industry
- new EPA powers and new technologies for waste tracking and waste data, including WasteLocate and other online waste reporting systems.

The 2014 reforms led to significant improvements in the operation of most waste facilities and improved ability for the EPA to efficiently regulate waste facilities.

Despite this, based on numerous investigations, industry feedback and data analysis, the EPA has become aware of a range of ongoing issues in the construction and demolition (C&D) waste sector.

The building, construction and demolition waste sector has the potential to return large volumes of recovered material into the economy and the environment. However, a number of operators in this sector have minimal environmental controls and poor processes that are not safely maximising the recovery of resources from C&D waste.

These 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 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 government make a number of changes to the waste regulatory framework in NSW to meet the objectives of the POEO Act. These proposed changes complement existing waste policy in NSW, 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 program ($465.7 million over five years).

2. Construction and demolition waste industry reforms

2.1 What's the problem?

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

Through compliance programs and regulation activities the EPA has found ongoing issues with a number of C&D waste facilities in the regulated area[1] of New South Wales. These facilities are licenced, or required to be licensed, to store, process or recover C&D waste. Identified issues 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 re-use
- negligent 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.

These practices pose environmental and human health risks as they may allow for contamination of material destined for re-use as fill on development sites.

Poor waste processing also leads to lower rates of resource recovery. The EPA is aware that many licensed C&D recycling facilities are diverting from landfill well under 50% of the waste they receive, representing a significant loss of valuable resources from the productive economy.

In addition, under the NSW Government's Waste Strategy, the target recovery rate for C&D waste is 80% by 2021. Legislating for improved processing of waste streams supports the Waste Strategy, diverts valuable resources from disposal back into the economy, 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 processes 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 re-used or re-enter the environment.

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. This has led to these jurisdictions achieving very high resource recovery rates for C&D waste.

2.2 What's the proposal?

The EPA proposes the introduction of a number of new provisions to the Waste Regulation to protect the community and environment from the risk of exposure to contaminated material and to maximise resource recovery from C&D waste in NSW. The proposed amendments are described below.

[1] The 'regulated area' is defined in Schedule 1 of the POEO Act, Part 3, clause 50.

Inspection and sorting requirements at licensed C&D waste facilities

There are new minimum requirements at C&D waste facilities in the metropolitan levy area (MLA) of NSW[2]. These requirements will apply from **1 March 2017** to facilities that:

- are licensed or required to be licensed for Resource Recovery, Waste Processing (Non-Thermal Treatment) and/or Waste Storage under the POEO Act; and
- receive more than 6000 tonnes of C&D waste a year.

C&D waste is defined as any waste or material generated or resulting from excavation, construction or demolition work, including soils and processed C&D waste.

The requirements will not apply to facilities that are licensed or required to be licensed only for waste disposal under the POEO Act.

Operators of C&D waste facilities in the metropolitan levy area will be required to comply with the following:

Mandatory procedures

The facility must have written procedures specifying the steps for identifying and immediately rejecting waste that the facility is not licensed to receive (contaminants and asbestos waste) and for removing and handling recoverable waste. These procedures must include steps for:

- identification of contaminants, asbestos waste and recoverable waste
- removal of contaminants, asbestos waste and recoverable waste from mixed waste streams
- storage and management of recoverable wastes.

Dedicated on-site storage areas for inputs and sorted materials

Facilities must have separate and identifiable areas for storage of contaminants, asbestos waste, any type of waste or material that is regularly received and recovered at the facility, and each type of material produced to a resource recovery order.

Inspection requirements

- On entry into the site, each load of C&D waste received must be visually inspected by appropriately trained people.
- Inspections will be undertaken when the waste is still in the vehicle or trailer.
- Trained inspectors will determine if contaminants or asbestos are present in the waste.
- Trained inspectors will follow the written procedures to manage the waste.
- Mixed loads of waste (for example skip bins) must be unloaded and spread on a surface with enough coverage for trained personnel to examine the whole load for contaminants or asbestos waste (such as tipping floors or conveyor belts).
- Mixed loads spreading inspections will be done before any processing of that waste.
- If a load of waste appears to contain asbestos waste or contaminants it must be isolated on site and sent to a lawful waste facility in accordance with the EPA mandatory procedures.

[2] As defined in Part 2, Division 1 Clause 7 of the Protection of the Environment (Waste) Regulation 2014

Sorting requirements

All C&D waste that is received and is not required to be isolated must undergo a sorting process, in the following order:

- physically sort the waste at the facility to separate recoverable materials, including any soils, masonry and ceramics
- if any contaminant or asbestos waste is discovered, it must also be isolated in its dedicated area
- sorted waste must be put in the dedicated storage areas for that type of material (including any material processed to meet a resource recovery order)
- do not mix the waste with any other material at the facility, except in order to process it to meet a resource recovery order at the time the waste leaves the facility.

Processing requirements

The occupier of the C&D waste facility must ensure that only material that has undergone the above process is sent off site for further recovery or disposal.

The occupier may not arrange, approve or allow for any of the following to be sent off-site:

- unprocessed building and demolition waste (as defined in Schedule 1 of the POEO Act)
- soils, masonry, ceramics, recovered fines
- materials that meet a resource recovery order and are mixed with any other waste or material, including with each other.

Any load of waste containing asbestos or other contaminants can be sent off site for lawful disposal only if the occupier has complied with the inspection requirements in relation to that waste and has taken prescribed action to ensure the safe and lawful transportation of that load.[3]

The EPA will publish guidelines that will outline the mandatory procedures, storage, inspection, sorting and processing requirements outlined above.

[3] These requirements will include that the occupier of the C&D resource recovery facility must:

- inform the transporter of the type of waste before it leaves the facility
- ensure that any load is covered at the time it leaves the facility to avoid the waste spilling, leaking or otherwise escaping from the vehicle or plant used to transport the waste
- keep records of the destination of the waste
- ensure that, for any load containing asbestos, the transporter has entered the consignment in WasteLocate (if required), and that, at the time the waste leaves the facility, it is covered and leak-proof, and:
  - if it contains bonded asbestos material, it is securely packaged during transportation
  - if it contains friable asbestos material, it is in a sealed container
  - if it contains asbestos-contaminated soils or other asbestos, it is wetted down.
- if the load contains trackable waste (as set out in Schedule 1 of the Waste Regulation), meet all waste tracking requirements under the Waste Regulation
- obtain evidence from the transporter of the load, before the waste leaves the facility, that they have all necessary licences for transport of the waste to its destination.

Resource recovery targets

C&D waste facilities in the regulated area must meet the following resource recovery targets for C&D waste over any 12-month period:

- 75% for any facility that receives more than 30,000 tonnes of C&D waste in the relevant 12-month period (large facilities)
- 50% for all other C&D resource recovery facilities (medium-sized facilities).

For a C&D recycling facility to meet its target, it must recover the minimum percentage of C&D waste received and send it off site by sorted waste type and/or under a resource recovery order.

The first 12-month period for this requirement will start on 1 March 2017. From that date any 12-month period can be used to determine compliance with the targets, such as March 2017–March 2018.

Penalties for a breach of any of the above requirements will amount to $15,000 for corporations and $7500 for individuals. Significant penalties of up to $44,000 may be imposed by a court on conviction for any of these offences.

Defences will be available in certain circumstances if the occupier of the facility is unable to comply owing to an emergency, a mandatory product recall or an EPA direction, or if they are acting as required by law.

Production and use of recovered fines

It is proposed that the EPA remove the existing general resource recovery order and associated exemptions for the land application of recovered fines. Operators who 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 the EPA introduce a new recovered fines specification for use as daily cover at landfills and a levy deduction for that use. The new specifications will include that the fines must:

- be classified as general solid waste – non-putrescible (but not building and demolition waste) under the EPA's *Waste Classification Guidelines 2014*
- not contain asbestos
- be soil-like in appearance
- be derived from processing C&D waste
- have a maximum permissible particle dimension of 50 millimetres, and be such that a maximum of 50% by mass of the material can be retained on a 1.18-millimetre sieve
- be tested, sampled, analysed and classified to ensure that they
    - meet the classification requirements
    - contain limited amounts of foreign material.

Testing must be conducted by a NATA (National Association of Testing Authorities, Australia) registered laboratory, and the recovered fines must meet the main functions of

daily cover in the EPA's *Environmental Guidelines: Solid waste landfills* (second edition, 2016) (landfill guidelines).[4]

A C&D waste facility that generates recovered fines other than for use as landfill cover will need to obtain a specific resource recovery order and exemption under Part 9 of the Waste Regulation. These documents will contain strict conditions requiring the facility to prove that it can meet contaminant levels and testing requirements in order to supply the fines for re-use in the environment as fill or for other applications.

2.3 How will this affect me?

Inspection and sorting requirements at C&D waste facilities

The minimum requirements for C&D waste facilities will apply to most facilities in the metropolitan levy area that receive C&D waste on a commercial scale for storage, transfer or processing. The requirements will still apply if the facility receives other waste streams, such as municipal solid waste or commercial and industrial waste.

The requirements will not apply to a facility licensed only for waste disposal under the POEO Act.

These changes will require operators of C&D waste facilities to review their current practices to ensure compliance. For some C&D waste facilities with existing procedures and good recovery rates, the proposed requirements will reflect existing operations.

Production and use of recovered fines

The NSW Government is opening new markets for recovered fines by enabling this material to be used as daily cover at landfills. This use is dependent on the recovered fines meeting the new specification. The daily cover specification for recovered fines will be less stringent than the existing recovered fines order and exemptions specifications. This is because a landfill is a less sensitive receiver than construction and other fill environments.

Although the current recovered fines order and exemptions will no longer be available, C&D waste facilities can apply for a resource recovery order and exemption specific to their facility for the reuse of recovered fines. A C&D waste facility that generates recovered fines other than for use as landfill cover will need to obtain a specific resource recovery order and exemption under Part 9 of the Waste Regulation.

[4] This includes the minimisation of adverse amenity impacts such as odour, dust, litter, the presence of scavengers and vermin, and the risk of fire. The cover should also limit rainfall infiltration into the waste and the emission of landfill gas.

3. Improving performance at landfills

3.1 What's the problem?

Through compliance campaigns and industry feedback, the EPA has become aware that a number of licensed landfills are exhuming waste from their landfills or sending unprocessed or mixed loads of waste off site.

Exhuming waste at landfills creates a number of environmental, safety and human health risks owing to the unknown nature of some landfilled wastes. Of particular concern are:

- the exposure and handling of asbestos and other hazardous materials
- landfill gas release and explosions
- fire
- odour
- landfill cell-liner failures and subsidence
- water pollution through leachate discharge
- air pollution through the emission of dust.

These practices and the associated risks are inconsistent with, and undermine the aims of, the landfill guidelines.

Landfills are designed to be the final destinations in the life cycle of waste. The only waste that should reasonably be removed from a landfill facility is material that has not yet been placed on, or in, an active cell and that has been separated according to waste type for recovery.

3.2 What's the proposal?

The EPA proposes the introduction of the following changes to the Waste Regulation to ensure improved environmental standards at landfills.

Offence to exhume waste

It will be an offence for an occupier of a facility required to be licensed for waste disposal under clause 39 of the POEO Act in the regulated area (relevant landfill) to exhume waste. Exhuming waste includes the removal from an active or dormant landfill cell of any waste that has been placed on or within that cell.

Offence to send mixed loads of waste from the facility

It will be an offence for an occupier of a relevant landfill to send or arrange to send a mixed load of waste from the facility if they can lawfully accept that waste. A mixed load of waste includes any load containing:

- a mix of different waste types (including specific waste types set out in Table 3.1 of the *Waste Levy Guidelines*)
- any unprocessed building and demolition waste (as defined in POEO Act Schedule 1 clause 50)
- 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 this offence will amount to $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.

3.3 How will this affect me?

The new offences will apply to all facilities in the regulated area that are required to be licensed for waste disposal under Schedule 1 of the POEO Act, irrespective of whether they are also licensed for resource recovery, waste storage or waste processing (non-thermal treatment).

Some landfill operators who are currently exhuming waste or sending mixed or unprocessed loads of waste off site will need to revise their current practices. The offence seeks to avoid the community's and environment's unnecessary exposure to the risks associated with exhumed waste and prevent double handling of waste. These requirements are designed to discourage poor landfill practices and protect the environment and human health.

The EPA will consider granting approval for exhuming waste when it is necessary for operational works. Waste disposal facilities will need to provide detailed impact assessments and demonstrate an understanding of all material contained in the relevant cell.

4. Improving handling of asbestos waste

4.1 What's the problem?

The Waste Regulation introduced a number of requirements for the handling of asbestos waste during transport and at landfills. Based on the implementation of these requirements the EPA is further clarifying the requirement to wet down asbestos-contaminated soils during transport.

The EPA has conducted a number of investigations into asbestos management at waste facilities. These investigations revealed some issues with the handling of asbestos waste, specifically the point of disposal and the material used to cover asbestos waste at landfills. These issues have the potential to cause avoidable public exposure.

The potential harm to the public from the lack of compliance with the existing requirements has led the EPA to further clarify the requirements for transporting asbestos waste and the disposal of asbestos and to also propose increasing the penalties for not complying with these requirements.

4.2 What's the proposal?

The EPA proposes the following further changes to the Waste Regulation to improve management of asbestos:

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, regarding disposal of asbestos waste at landfills, 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 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 virgin excavated natural material[5]
- 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.

[5] Virgin excavated natural materials (VENM) is defined in Schedule 1 of the POEO Act.

Fines for a breach of any of these requirements, or of 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 larger increase in penalty notice amounts introduced in May 2014.

4.3 How will this affect me?

The proposed amendments are minor as the changes in regulation are to clarify current requirements and do not introduce new requirements. The changes are intended to reduce the risk of exposure to the public and do not impose undue burden on the waste industry.

The significant increases in the fines for non-compliance with these requirements are designed to provide an effective deterrent to committing environmental offences. They also reflect community expectations regarding the financial penalties that apply to environmental offences.

5. Clarifying the application of transported waste deductions

5.1 What's the problem?

Under clause 16 of the Waste Regulation, the occupier of a levy-liable waste facility may be entitled to a full levy deduction for waste sent off site to a lawful facility. This is known as a transported waste deduction.

The purpose of transported waste deductions is to acknowledge that waste facilities should not pay the levy for waste that is sent off site for processing or further recovery.

Some landfill operators are sending waste that can be lawfully disposed at their facilities to other landfills for disposal. This practice can have significant environmental and human health impacts through the unnecessary exposure of the community and the environment to the waste.

5.2 What's the proposal?

Onus of proof

It is proposed that waste facilities claiming a transported waste deduction will be required to provide evidence (i.e. have the responsibility of proof) of the lawfulness of the receiving facility to use waste for the stated purpose. This also applies to the receipt of waste at a intermediary facilities, including intermodal facilities[6] or transfer stations.

This includes proving the receiving facility has the required planning consent, Environment Protection Licence and providing evidence that the recipient has received the same waste.

Landfills (i.e. any facility licensed for waste disposal) may only claim a transported waste deduction on waste sent to a lawful facility for recovery or recycling.

Landfills will not be able to claim transported waste deductions for exhumed waste or waste for disposal at another facility.

5.3 How does this affect me?

These requirements will apply to all levy-liable facilities in NSW. To be eligible for a transported waste deduction, occupiers of levy-liable waste facilities (such as landfills or recyclers) will need to obtain and keep:

- evidence that any outgoing waste is sent to a licensed waste facility (including any transfer station or intermodal facility)
- evidence that relevant planning consent has been issued for that facility
- dockets for each transaction, showing that the recipient facility has received the waste for the stated purpose.

These changes are not significant as they confirm practices that levy liable waste facilities should currently be undertaking to manage business risks. Levy-liable facilities should be taking measures to ensure compliance with the conditions of a transported waste deduction.

6 A facility that supports a change in modes of transportation (e.g. rail, ship and truck for freight in containers)

6. New eligible operational purpose deductions

6.1 What's the problem?

Under the Waste Regulation the EPA can approve a levy deduction for the use of waste at a levy-liable waste facility for an operational purpose.

In the new landfill guidelines the EPA has promoted the use of a bedding layer above the geosynthetic clay liner in landfills to prevent tearing and puncturing of the liner. The EPA also recognises that certain waste materials can legitimately be used as biofilters to minimise odour at resource recovery facilities such as alternative waste treatment facilities.

To reflect these developments, the EPA wants to clarify the approved operational purposes in which these materials can be used at levy-liable facilities.

6.2 What's the proposal?

The EPA proposes to amend the Waste Regulation to enable levy-liable facilities to seek approval for the operational use of waste or waste derived material as bedding layer or biofilter media at resource recovery facilities.

At the time the waste is received at the facility the material will have to meet the specifications set out in the *Waste Levy Guidelines*. The bedding layer will need to be a fine particulate material that is spread at a thickness not greater than 300 millimetres in order to prevent tearing and puncturing of the liner.

If approval is provided, the facility will be able to claim an operational purpose deduction for re-use of the waste (i.e. in the bedding layer or as biofilter media) in accordance with the terms of the approval.

6.3 How will this affect me?

The proposed amendments would introduce a new option for levy-liable facilities to apply for a levy deduction for the operational use of approved waste materials. This provides material re-use opportunities and a financial benefit for facilities using these materials. In addition to the positive resource recovery outcomes, the use of biofilters for emission and odour control has benefits for the community.

7. Clarifying the application of the waste levy at resource recovery facilities

7.1 What's the problem?

On 1 August 2015, certain resource recovery facilities in the regulated area became liable for the waste levy. This included facilities that store, recover, recycle or process waste. These levy-liable facilities have to pay the levy only when they trigger criteria. The liability is extinguished when their waste is sent off site for lawful re-use, processing or disposal.

Currently, although these facilities become liable for the levy when they receive waste, payment is only triggered in the following circumstances:

- when the amount of waste exceeds the facility's authorised amount[7] known as excess waste
- if waste is on site for more than 12-months (12-month waste) or
- if waste is sent off site unlawfully.

All of the above are known as trigger events.

If waste is on site for more than 12-months but is processed in accordance with the requirements of a resource recovery order it does not trigger a levy payment.

Facilities that were captured in the August 2015 change are now operating in the new levy system. The EPA has found that this is improving data on stock throughput, significantly reducing stockpiling and vastly improving data-reporting in relation to the operation of these facilities.

However, industry has requested the EPA clarify how these laws apply in certain circumstances.

7.2 What's the proposal?

The EPA proposes that the following minor amendments be made to the Waste Regulation about the application of the waste levy at levy-liable licensed waste facilities other than landfills (resource recovery facilities):

Clarifying payment obligations

Clause 10B of the Regulation will be amended slightly to clarify that, for a resource recovery facility:

- Obligations to pay the levy arise only when trigger events occur.
- The applicable levy rate for Excess Waste or 12-month waste is the metropolitan levy area rate for facilities in the MLA, and the regional levy area rate for facilities elsewhere in New South Wales (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 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.

[7] Authorised amount is defined in the Protection of the Environment (Waste) Regulation 2014, Part 2, Division 2 10B, (5).

For example, if the occupier has paid $10,000 for excess waste in one month and then sends 30% of that waste off-site the next month, the occupier will receive a refund of 30% of $10,000 in that month ($3000), irrespective of the applicable levy rate.

- 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 VENM (virgin excavated natural material) rates

The concessional levy rates for shredder floc and VENM in 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 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 (5 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.

7.3 How will this affect me?

These amendments are generally of an administrative nature, and they reflect existing EPA operational practice in determining levy liability. The changes will clarify for industry the circumstances in which the levy applies, and the amounts of liabilities, specific payments or refunds. They will require minimal – if any – changes to the existing practices of levy-liable facilities.

These changes don’t apply to facilities that receive only trackable liquid waste.

8. Monitoring waste at licensed facilities

8.1 What's the problem?

To be able to effectively regulate the management of waste stockpiles at licensed waste facilities, and for a streamlined waste levy system, it is critical that the EPA provide industry with flexible and robust methods to determine the amount of waste on site.

The EPA recently rolled out the Waste and Resource Reporting Portal to enable industry to report online monthly on the amounts of waste received and sent from a facility. These reports give the EPA a better understanding of the waste movements at a facility and enable us to work out the correct levy liability. The EPA understands that green waste and alternative waste treatment material may undergo mass change while at a facility, and this needs to be accounted for in determining the amount of waste at a facility at a particular point in time.

To provide the EPA with data from levy-liable facilities, each of these facilities is also required to do volumetric surveys of their waste at prescribed times. These surveys are valuable to both the operators and the EPA in determining compliance with the relevant conditions and helping with stock management. The EPA understands that some resource recovery facilities may prefer to use tools that are better suited than volumetric surveys to conduct stocktakes of waste at particular points in time.

To be a more efficient regulator, the EPA also needs more effective powers to monitor in real time suspected illegal activities at the waste facilities it regulates. To achieve this it is apparent that clarification is needed about the requirements for waste facilities to install video-monitoring and the requirements for certain facilities to install weighbridges.

8.2 What's the proposal?

The EPA proposes that the following amendments be made to the Waste Regulation:

Stocktake of waste

Facilities licensed only for resource recovery, waste storage or waste processing (non-thermal treatment) under Schedule 1 of the POEO Act will not be required to do mandatory annual volumetric surveys. These facilities will only need to undertake a volumetric survey as and when required by the EPA by notice.

The EPA may also require the occupier of a facility to do another type of stocktake, in a form and manner that will be published in the *Waste Levy Guidelines* (e.g. a survey that relies on corporate or other records), if this is considered more suitable for a particular purpose.

Estimation of waste on site

The EPA will have the power to estimate the amount of waste at a facility if it reasonably suspects that the waste is subject to mass loss or gain at the facility. The EPA will consult with the facility in this process, and it will use the best available information on variables affecting mass (such as moisture content and rainfall).

The EPA may also require a volumetric survey to determine the mass loss or gain. The estimated amount can be used to reduce levy liability for that amount of waste, and to determine whether a facility is in breach of its authorised amount as outlined on the Environment Protection Licence for the facility.

Video-monitoring powers

The power for the EPA to require the occupier of a scheduled waste facility to install and operate a video-monitoring system (clause 39 of the Waste Regulation) will be amended to

clarify that any written notice issued by the EPA may specify the manner in which video-monitoring systems are to be installed, operated and maintained.

The power for video monitoring 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.

Weighbridges at resource recovery facilities

The Waste Regulation will be amended to clarify that if a resource recovery facility receives **only** hazardous waste, non-trackable liquid waste, restricted solid waste or clinical and related waste, it will not be required to install a weighbridge. This is because there are other, more appropriate methods for calculating the weight of these wastes.

8.3 How will this affect me?

These amendments provide greater flexibility in determining the amount of waste at a levy-liable waste facility at a particular point in time. Resource recovery facilities that are not licensed to landfill waste will not be required to do annual volumetric surveys. The EPA may require a volumetric survey or other form of stocktake at any other time it considers necessary.

To make sure that the EPA has accurate data about the amount of waste actually present at a facility at a particular point in time, the EPA will also be able to take proactive measures if it determines that waste has undergone a substantial mass change while at a facility. The EPA will be better able to regulate the facility and reflect the correct measurement of waste; allowing for legitimate external factors and climatic conditions.

Industry will have clarity about how video-monitoring systems can be used and the circumstances in which resource recovery facilities will not require weighbridges.

9. Improved waste transport

9.1 What's the problem?

An efficient and effective resource recovery system is underpinned by the safe and efficient transport of waste. However, when waste is transported unnecessarily or without proper controls it presents an enormous cost and significant risks to the environment and to the community. The unnecessary transport of waste can clog arterial roads, undermines investment in local resource recovery, places the community at risk and inefficiently consumes resources. Likewise, the transport of waste without proper safeguards can lead to contaminants entering the environment or impacting on human health.

It is critical that waste is transported in a responsible and environmentally sound manner.

The proximity principle offence was introduced in the Waste Regulation in 2014 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.

The EPA will also 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 fully covered and sealed, that relevant waste operators are licensed, have taken steps to minimise the risks of spills, contamination, leakage and the unnecessary human exposure to asbestos and other contaminants. The EPA will continue to investigate new and additional regulatory tools to address the risks and impacts of the transport of waste.

9.2 What's the proposal?

The proposals are:

Removal of the proximity principle offence

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

Penalties for re-mixing 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).

9.3 How will this affect me?

These changes are designed to ensure waste is transported in a responsible and environmentally sound manner, to discourage the double handling of waste and to make sure that the EPA has reliable waste transport data. The changes will also provide greater regulatory certainty for industry.

From 1 March 2017 the proximity principle offence will no longer apply. However, waste facilities that are licensed or required to be licensed (such as transfer or intermodal facilities) will need to continue to comply with all applicable laws in the transportation of waste, including:

- having all necessary licences for waste transport (as required by Schedule 1 of the POEO Act)
- reporting to the EPA on the transport of:
    - loads of waste tyres or asbestos waste, in WasteLocate, under clauses 76 and 79 of the Waste Regulation
    - loads of trackable waste on the EPA's online waste tracking system under Part 4 of the Waste Regulation
    - loads of waste from the metropolitan levy area to another state or territory under Parts 6 and 7 of the Waste Regulation
- complying with all requirements for the transport of waste containing asbestos, including as set out in this paper
- transporting waste to a lawful facility, including any transfer station or intermodal facility (see section 143 of the POEO Act)
- complying with all biosecurity requirements of the Department of Primary Industries, including under the *Plant Diseases Act 1924*, to prevent the spread of diseases and pests (including fire ants and *phylloxera*).

10. POEO General Regulation: changes to land pollution offence

10.1 What's the problem?

The 2014 waste reforms established that land pollution is the application to land of hazardous waste, restricted solid waste, more than 10 tonnes of asbestos waste and more than five tonnes of (or 500) waste tyres as land pollution, unless it has been authorised by an Environment Protection Licence. This is specified in clause 109 of the Protection of the Environment (General) Regulation 2009 *(*POEO General Regulation). However, the waste regulatory framework generally applies to off-site management or disposal of waste. Clause 109 was not intended to prescribe on-site land application of these types of waste as automatically constituting land pollution. There are other laws that restrict on-site land application of this material, including the *Contaminated Land Management Act 1997.*

10.2 What's the proposal?

The EPA proposes the amendment of clause 109 of the POEO General Regulation 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. On-site is a reference to the premises on which the waste was generated.

The EPA proposes that the Regulation clarify that land pollution as currently outlined does not automatically apply to waste applied to land on-site. The original definition was not intended to automatically define on-site land application of waste as land pollution

10.3 How will this affect me?

This change should provide clarity for industry – particularly for contaminated-sites consultants and auditors – conducting standard on-site remediation works.

On-site land application of these wastes may still constitute a land pollution offence under section 142A of the POEO Act if it causes degradation of the land, resulting in actual or potential harm to the health or safety of humans, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage.

In addition, 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 received from off site will still automatically constitute land pollution, unless it has been authorised by an Environment Protection Licence.

11. POEO Act: Changes to licensing requirements

11.1 What's the problem?

Compliance campaigns and industry feedback have revealed that some waste licensing categories are unclear or do not include facilities that could pose significant environmental risks.

This includes intermodal transport facilities, facilities receiving biosolids, and energy-recovery facilities. Some changes are required to ensure that regulatory resources are allocated appropriately to those facilities that pose the most risk.

11.2 What's the proposal?

The EPA proposes the following amendments to Schedule 1 of the POEO Act:

Timber-cutting yards

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

Waste storage facilities

Clause 42 of Schedule 1 will be amended to clarify that facilities will be required to be licensed for waste storage if waste is received from off site, stored and/or transferred from one vehicle to another, or unloaded from a vehicle (including rail). This includes intermodal facilities.

Energy-recovery facilities

Clause 18 of Schedule 1 will be amended to clarify the circumstances in which a resource recovery exemption is required under clause 40 of Schedule 1 for a facility that is also required to be licensed for energy recovery.

Biosolids

The definition of organics in clause 50 of Schedule 1 of the POEO Act will be amended to clarify that the only biosolids defined as putrescible organics are unstable or untreated biosolids.

11.3 How will this affect me?

Waste storage facilities, including intermodal facilities, that receive over 6000 tonnes of waste a year, or that have over 1000 tonnes of waste on site each year, will be required to be licensed for waste storage. This is to make sure that the environmental and human health risks at facilities where significant volumes of waste are handled are managed appropriately.

If these facilities receive waste above the thresholds for C&D waste facilities, then they will also have to comply with the C&D waste facility requirements as outlined in Section 2, Construction and demolition waste industry reforms.

The changes regarding timber-cutting yards and energy recovery are aimed at reducing the unnecessary administrative burden in relation to these facilities. The clarification of which biosolids are non-putrescible organics will help facilities to determine the threshold at which they will need to be licensed for composting under clause 12 of Schedule 1 of the POEO Act.