

Draft Submission on the *Proposed minimum standards for managing construction waste in NSW* and other miscellaneous waste reforms

December 2017

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Opening

Local Government NSW (LGNSW) is the peak organisation for local government in NSW, representing the interests of NSW general and special-purpose councils. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to comment on the 'Proposed minimum standards for managing construction waste in NSW and other miscellaneous waste reforms'. In developing this response, LGNSW sought feedback from a number of councils which operate landfills.

Please note that in order to meet the consultation deadline, this submission is provided in draft form, in anticipation of LGNSW Board endorsement at their February 2018 meeting. LGNSW will advise of any amendments to the submission at that time.

Response

The proposed minimum standards and associated changes are outlined in a number of documents including the draft regulation, draft standards and the explanatory paper. This response has been structured to reflect the items listed in the Explanatory paper: *Reforms to the construction waste recycling sector*.

Construction and demolition waste industry reforms

The local government sector welcomes improvements to the construction and demolition (C&D) waste sector.

The standards require specific tip and spread inspections which rely on appropriately trained personnel to detect asbestos. Although this method of rapidly determining asbestos contamination is common, it does not always successfully detect the presence of asbestos. Landfill occupiers who can demonstrate that they have followed the proposed standard correctly should in some way be afforded regulatory leniency should asbestos pass through undetected and accidentally end up in reused or recycled construction and demolition material.

Some councils are concerned that the requirement for a 100m² hardstand for the tip and spread inspection area will be cost-prohibitive. It is recommended that alternatives such as simple road base hardstands are considered an optional alternative for suitable sites.

The proposed standards allow for the use of recovered C&D fines as daily cover at landfills, with a waste levy contribution concession. The local government sector welcomes this proposal in principle. The current use of virgin excavated natural material as daily cover promotes the quarrying of these natural materials, increases landfill operation costs and is not considered sustainable. However without knowing how the concessional rate will be applied it is difficult to understand the impact on landfill and resource recovery operations more broadly. For example, if the fines attract a 50% concession (i.e. 50% of \$138.70/tonne for cover material sourced from the metropolitan area) then it is still cheaper to transport the material interstate (where costs are understood to be in the order of \$20/tonne).

An alternative to applying a concessional rate would be to allow the use of recovered fines with no levy charge, but limit it to a percentage of total facility throughput eg, 10% of total incoming tonnage to the landfill can be recovered fines for daily cover. Daily cover material used above that threshold is charged the current waste levy.

Guidelines outlining the criteria for acceptable daily cover material composition and the operation of the concessional rate should be made available for consultation so that the changes can be properly understood and commented on..

The proposed definition of a 'Construction and demolition waste facility' applies to facilities in the Metropolitan Levy Area (MLA), as well as those licenced facilities in the Regional Levy Area (RLA) that receive more than 6000 tonnes of C&D waste in a 12 month period from the Metropolitan Levy Area. This definition is confusing and likely to be hard to enforce given it is often difficult to determine where C&D waste has originated i.e., whether it originates from the MLA or RLA. For simplicity, it is recommended that the definition is amended to capture any facility in the regulated area which receives more than 6000 tonnes of construction and demolition waste, regardless of its origin.

It is disappointing that the resource recovery targets for the C&D sector are not being introduced at this stage. The local government sector works hard to achieve the resource recovery targets for municipal solid waste. Without mandated construction and demolition (C&D) recovery targets it will be difficult for the state to achieve the overall 75% diversion target. It is recommended that other options to increase resource recovery in the C&D sector are also explored.

One suggestion for achieving increased resource recovery in the C&D sector is for the EPA to work with the Department of Planning to establish a connection between waste management plans associated with development consent and Waste Locate. Waste Locate is the EPA's tracking tool currently used to track asbestos and tyre transport across the state, which can be expanded to tack other materials such as C&D waste. The connection between waste management plans and Waste Locate could afford the EPA improved influence over the sector. We recognise this change would be challenging to introduce during this round of reforms, therefore we encourage the EPA to consider this measure in the future.

Recommendations:

1. Make available the levy guidelines for acceptable daily cover material prior to the proposed regulation changes.
2. Provide alternatives to the 100m² hardstand requirement for suitable sites.
3. Simplify the definition of a 'Construction and demolition waste facility' to exclude reference to the origin of the material.
4. Explore methods for achieving the state C&D resource recovery target, including creating a link between Waste Locate and waste management plans associated with development consent.

Improving performance at landfills

The proposal includes an offence to exhume waste from landfills. It is recommended that a clear definition of the word 'exhume' is provided in the legislation. It is unclear if the proposed reforms allow material to be dug up and moved within a landfill site, for example for landfill improvement or road works.

The proposal to make it an offence to exhume or transport waste from a licensed facility will have a number of unintended consequences. There are a number of recovery operations currently being carried out at council-operated waste facilities that this requirement will prevent. These include:

- Tips shops to divert waste away from landfill

- E-waste collection points to divert e-waste from landfill
- Community Recycling Centres to recover problem wastes
- Other resource recovery operations, such as white good and tyre recycling
- Composting to convert garden and food waste into compost
- Mulching services

It is also assumed that the proposal will make it an offense to transport waste listed under resource recovery orders and exemptions from a licensed facility. These commonly recovered and reused wastes should be excluded from the offence in order to promote improved recovery.

A number of councils have raised concerns with the requirement for additional resource recovery licences on landfill sites so as to enable recovery activities. This concern relates to the complexity of the layout at landfills sites, as site layouts change and/or do not necessarily provide a clear and permanent demarcation between areas of landfill and resource recovery activity.

Recommendations:

5. Provide a clear definition of the word 'exhume' within the regulation.
6. Amend the legislation so that genuine resource recovery activity from landfills remains legal.
7. Consider the impact of the reforms on resource recovery orders and exemptions, seeking to promote increased resource recovery.
8. Reconsider the requirement for additional resource recovery licences for recovery activity on landfill sites.

Improving handling of asbestos waste

The proposal to make the person unloading or disposing, and the occupier of the landfill, both responsible for the asbestos waste (when delivered and placed into landfill) could more clearly define which party is responsible for specific parts of the process. The roles and responsibilities of each party should be clearly stated in the regulation to avoid any situation that may arise where neither party is accountable should a breach of the regulations occur.

As landfill operators, councils seek guidance from the EPA on how to ensure these new responsibilities are met. It is recommended that a prescriptive guideline for handling asbestos at a waste facility is provided to the waste sector to give operators satisfaction that they have met their obligations. It is anticipated that costs for disposal of asbestos will rise as training levels and acceptance methods are improved.

The asbestos inspection and screening method proposed for C&D waste in the draft standard may not in all cases successfully identify asbestos contamination. This may lead to landfill operators unknowingly recycling asbestos-contaminated C&D waste and selling that back to the public. Therefore there should be more clarification and support provided to landfill operators to ensure they are aware of the risks associated with screening and the consequences should they fail to identify asbestos contamination correctly.

The use of rejected loads registers as suggested in the standard is supported. However there should be more use made of the registers to ensure illegal dumping are minimised. Where landfill operators inspect, record and reject loads of waste contaminated with asbestos, these should be reported immediately to the EPA to enable follow up regulatory action. Further, the

rejected load should be registered with Waste Locate to ensure that the asbestos contaminated waste is tracked and delivered to a facility licenced that accepts asbestos waste.

Recommendations:

9. Clearly define the roles and responsibilities of all parties in relation to asbestos disposal.
10. Provide a prescriptive guideline for handling asbestos at a waste facility and amend the legislation so that landfill operators are only held responsible for following their responsibilities as contained within the guideline.
11. Connect the rejected load register with Waste Locate to ensure waste is not illegally dumped.

Improved transport of waste

It is unfortunate that the Proximity Principle is being revoked. The NSW EPA is congratulated for attempting to prevent the long distance transportation of waste for disposal.

The proposal introduces a 12 month timeframe within which facilities can seek levy deductions for materials transported away from the facility. This proposed 12 month levy deductible time period is likely to limit a number of typical resource recovery practices. For example, some low volume materials take longer than 12 months to stockpile adequate amounts for recovery collections to be viable. Other practices such as onsite mulching and composting are also likely to be impacted as these processes can take longer than 12 months to complete, rendering genuine recovery practices liable for the levy. It is recommended that the impacts of the 12 month timeframe be carefully considered before being adopted across all facilities and situations.

The change to Clause 78(1) of the *Waste Regulation 2014* states that the part of the vehicle used to transport asbestos must be leak proof. Further detail should be provided to define leak proof, specifically if this relates to air, gas or liquid leaks.

Recommendations:

12. Reconsider the 12 month levy deductible time period to ensure onsite resource recovery practices are encouraged.
13. Provide a clear definition of 'leak proof' in the standard.

Conclusion

The local government sector welcomes improvements to the construction and demolition waste sector. This submission makes 13 recommendations about how the proposed C&D standards and general waste reforms can be improved. In particular, councils are concerned with the proposed requirement preventing waste being exhumed and transported from a landfill, thus limiting current resource recovery practices. Councils are also concerned with the new responsibilities for landfill operators dealing with asbestos and that an operator's responsibility should be clearly outlined in a guidance document. LGNSW and the local government sector look forward to working with the EPA to deliver improved landfill outcomes.

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