



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

The excavated public road material exemption 2014

Introduction

This exemption:

- is issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation); and
- exempts a consumer of excavated public road material from certain requirements under the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the application of that waste to land, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the excavated public road material order 2014'.

1. Waste to which this exemption applies

- 1.1. This exemption applies to excavated public road material that is, or is intended to be, applied to land within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities.
- 1.2. Excavated public road material means materials:
 - being rock, soil, sand, bitumen, reclaimed asphalt pavement, gravel, slag from iron and steel manufacturing, fly and bottom ash, concrete, brick, ceramics and materials that hold a resource recovery order for use in road making activities; and
 - that have been excavated during the construction and maintenance of council and RMS public roads and public road infrastructure facilities.

This does not include any waste that contains coal tar or asbestos, or any waste that is classified as hazardous, restricted solid, special or liquid waste as defined in the Act.

2. Persons to whom this exemption applies

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

3. Duration

- 3.1. This exemption commences on 24 November 2014 and is valid until revoked by the EPA by notice published in the Government Gazette.

4. Premises to which this exemption applies

- 4.1. This exemption applies to the premises at which the consumer's actual or intended application of excavated public road material is carried out.

5. Revocation

- 5.1. 'The excavated public road material exemption 2012' which commenced on 11 May 2012 is revoked from 24 November 2014.

6. Exemption

- 6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the POEO Act and the Waste Regulation in relation to the consumer's actual or intended application of excavated public road material to land within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities at the premises:

- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 and 42 of Schedule 1 of the POEO Act;
- Part 4 of the Waste Regulation;
- section 88 of the POEO Act; and
- clause 109 and 110 of the Waste Regulation

- 6.2. The exemption does not apply in circumstances where excavated public road material is received at the premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

7. Conditions of exemption

The exemption is subject to the following conditions:

- 7.1. The excavated public road material can only be applied to land within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities.
- 7.2. The excavated public road material can only be stored within the road corridor at the site where it is to be applied to land.
- 7.3. The excavated public road material cannot be applied to private land.
- 7.4. The consumer must ensure that any application of excavated public road material to land must occur within a reasonable period of time after its receipt.

8. Definitions

In this exemption:

application to land means applying to land by:

- spraying, spreading or depositing on the land; or
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

coal tar means the by-product of the thermal processing of coal and means material that has or reasonably is suspected to have present volatile organic contaminants, such as phenols, as well as other toxic materials such as polycyclic aromatic hydrocarbons (PAHs).

consumer means a person who applies, or intends to apply, excavated public road material to land.

council means the council of a local government area.

public roads means:

- (a) any road that is opened or dedicated as a public road, whether under the *Roads Act 1993* (the *Roads Act*) or any other act or law, and
- (b) any road that is declared to be a public road for the purposes of the *Roads Act*.

public road infrastructure facilities means:

- (a) tunnels, ventilation shafts, emergency accessways, vehicle or pedestrian bridges, causeways, road-ferries, retaining walls, toll plazas, toll booths, security systems, bus lanes, transit lanes, transitways, transitway stations, rest areas and road related areas (within the meaning of the *Road Transport (General) Act 2005*), and
- (b) associated public transport facilities for roads used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*, and
- (c) bus layovers that are integrated or associated with roads (whether or not the roads are used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*), and
- (d) traffic control facilities (as defined by the *Transport Administration Act 1988*), RMS road safety training facilities and safety works.

RMS means the Roads and Maritime Services of New South Wales.

road corridor means land that is used for the purposes of a road or road infrastructure facilities or for maintaining or constructing a road or road infrastructure facilities and that is owned or managed by the RMS or council.

Manager Waste Strategy and Innovation

Environment Protection Authority

(by delegation)

Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption. The current version of this exemption will be available on www.epa.nsw.gov.au

In gazetting this exemption, the EPA is not in any way endorsing the use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this exemption are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this exemption nor the accompanying order guarantee that the environment, human health or agriculture will not be harmed.

The consumer should assess whether or not the excavated public road material is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

Regardless of any exemption provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site.

The receipt of excavated public road material remains subject to other relevant environmental regulations in the POEO Act and Waste Regulation. For example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the special requirements for asbestos waste (Part 7 of the Waste Regulation), regardless of having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

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