

Hi, I am passionate about the reuse of construction materials and the use of recycled concrete road base.

Some background

The Material Guideline: Clean Fill, DER 2014 defines clean fill as material that will have no harmful effect on the environment and consists of rocks or soil, or a combination of rocks and soil, which is extracted in a raw, unaltered form and which is not previously been used, consumed or subject to processing of any kind. Materials derived from C&D processing cannot be classified under the DER's definition as clean fill.

The Environmental Protection Act 1986 defines waste as matter, whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discarded into the environment, or is prescribed to be waste. As C&D waste is not discarding matter into the environment, we do not consider the materials produced from C&D recycling facilities to be waste.

The Material Guideline: Construction Products, DER 2014, Section 3, states that if recycled road base and recycled drainage aggregate are produced in accordance with the specifications and procedures described within the document and by following testing, keeping the required records and users are authorised to use the materials the DWER will no longer regard materials produced from C&D waste to be waste. The processes described in the Material Guideline: Construction Products can be easily met by C&D processing facilities.

My comment

It is my position that the materials produced at C&D facilities will be neither clean fill nor waste.

The backfilling of old quarry voids should be allowed if using processed C&D materials.

The DWER considers that backfilling a void is a landfill operation due to the materials used being classified as waste. But by the DWER's own definition processed C&D materials is not waste.

The discussion paper goes a long way to addressing this issue, but by continuing to use the Justice Beech's definition of clean fill means the use of C&D processed materials will attract a levy payment.

I have attached a ruling on waste from South Australia which I support. It states that waste ceases to become waste when its character changes either through being sold or recycled.

In summary I support the proposed amendments provided that recycled concrete road base and other certified clean processed C&D materials can be used as backfill in voids and not attract the landfill levy.

Regards,

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Waste or resource?

I A South Australian court decision has defined when recovered and recyclable materials cease to be 'waste', with far-reaching consequences for the industry. By Kyra Reznikov.

The resource recovery and recycling industry has long seen the benefits of converting waste into valuable products such as construction material, fuel or raw material for manufacturing.

A 2007 decision in the South Australian Environment, Resources and Development Court has now defined the point at which waste materials received at a resource recovery or recycling facility are legally converted from 'waste' into something other than waste, and therefore cease to be subject to environmental and licensing requirements applicable to waste.

In the matter of *Resourceco Pty Ltd v Environment Protection Authority*, Judge Christine Trenorden considered the meaning of 'waste' as defined in South Australia's *Environment Protection Act*.

Resourceco operates a resource recovery facility, under an EPA licence, where it sorts and partially processes construction and demolition waste before it is transferred to other sites for processing into construction fill and alternative fuel. In the case before the court, the classification of material stockpiled by Resourceco next to its facility was critical to the question of whether the stockpile site should be separately licensed as a waste depot.

Judge Trenorden stated that the relevant test to determine whether a material was waste was whether it was: "any discarded, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the matter... whether of value or not".

This test flows from the definition of waste in subsection 3(1) of the act. She held that a material becomes waste at the point of discard/abandonment, or the point at which a decision is made that the material is unwanted or surplus. It ceases to be waste when its character changes, either through being sold or by being recycled to become useful.

Her Honour applied this test to the numerous types of material stockpiled by Resourceco (and a previous occupant). For



When is a waste material really a resource?

example, buns on the site formed from C&D waste had been there since before Resourceco took occupancy. It appeared to the court to have been abandoned with no present use to anyone. It was waste.

A material, dubbed 'Calsilt blend', a product of an unsuccessful experiment by Resourceco blending inert fines with a calcium-based waste material, had no market. It was therefore deemed 'unwanted' and classified as waste.

Trommel fines (less than 20mm) recovered from a waste stream via processing at Resourceco's facility have a use, albeit after blending. They ceased to be waste.

But piles of mixed material containing combustibles, which had been partially processed to remove any metal and inert material, would only be of use (for instance as fuel) after further processing and was therefore still a waste until after that processing had occurred.

Similarly, piles of mixed inert material for eventual use as construction fill remained a waste until further processing.

Classification and conclusion

From this reasoning, a number of conclusions can be drawn. Processed material that has an immediate use has ceased to

be waste. If it has been reprocessed to the point it can be used by blending with other material, it is usable.

Partially processed waste material sold by one person to another ceases to be waste at the point of sale, as the purchase indicates it has become wanted. Therefore, sites that purchase processed material for use as construction material or raw material are not receiving or storing waste. Similarly, sites that purchase it for use as fuel are not receiving or incinerating waste.

The decision has not been appealed and the classification of recovered and recyclable material as 'waste' has not been considered further in other Australian courts. While the decision is likely to have significant impact in South Australia, it may also impact most other states.

At a minimum, the Resourceco case should be seen as a cautionary tale to resource recovery and recycling facilities that store source materials, partially processed materials or even fully processed materials on separate sites: despite their clear potential value, without an immediate use, they might still be seen as 'waste' in the eyes of your EPA.

Kyra Reznikov is an associate with South Australian law firm Finlaysons. **WME**