

Project Manager

Amendments proposed following the Eclipse decision

Department of Water and Environmental Regulation

wastereform@dwer.wa.gov.au

February 2, 2018

Consultation Paper: Amendments to Environmental Protection Regulations 1987 to provide for use of clean fill and uncontaminated fill

Thank you for responding promptly to widespread concern in the land development industry about the potentially damaging consequences of the Eclipse decision in relation to the excavation and transfer of clean fill during the construction of residential and commercial subdivisions.

The proposed amendments to Schedule 1 of the *Environmental Protection Regulations 1987* are welcome and should help address the concerns of land development contractors who wish to transfer clean fill between development sites for site construction purposes. Accordingly, we recommend that regulatory changes are made as soon as possible to allow this practice to continue.

Our concerns about some other aspects of the proposed amendments are outlined below.

Processing of clean fill.

The requirement that clean fill 'has not ...been used or subject to processing of any kind' should specifically exclude screening of clean fill from the definition of 'processing'.

Definition of 'uncontaminated fill'

The testing and sampling requirements as proposed have the potential to inflict onerous costs on industry. CCF WA recommends wider consultation with industry on the economic impacts before committing to these requirements.

More broadly, the proposed category of 'uncontaminated fill' may cause the unintended consequence of acting as a roadblock to the Government's intention of achieving positive environmental outcomes through productive recycling – see comment below under the heading 'need for broad redefinition of waste'.

Exclusion of asphalt

It is not clear how the exclusion of asphalt from the definition of 'uncontaminated fill' will affect the market for recycled asphalt. Currently, asphalt is commonly recycled, with environmental and economic benefits, and this practice should not be discouraged nor penalised.

Need for broad redefinition of waste

CCF notes that from its inception, the purpose of the waste levy has been to encourage environmental outcomes, i.e. promote the recycling of waste rather than its disposal to landfill. However, the Eclipse decision has jeopardised this by defining waste very broadly: *"where material is unwanted by the source, it will be waste, regardless of whether it can be reused elsewhere by someone else"*. Any material removed (by excavation or other means) from a source, and removed from that source, is therefore waste and will attract the levy.

While the proposed new category of 'clean fill' gives some comfort to contractors removing and transporting material for land development (albeit without any processing), the proposed amendments do not appear to create any more certainty or encouragement for companies recycling 'waste' material to create construction materials with commercial value.

We strongly support the recommendation in WA Limestone's submission that extensive legislative changes are needed so that valuable recycled materials are not regarded as waste:

To address the unintended consequences of the Eclipse decision, and to resolve the current hurdles preventing recycling, appropriate amendments must be made to the EP Act, subsidiary legislation and waste definitions, to exclude as "waste" any recycled material regardless of physical property, chemical composition, contamination, etc. where that material can be proven to be "wanted" i.e. have commercial value.

As we recommended in our submission (November 2017) on legislative reform of the waste levy and waste management, materials recycled for use in construction need to be explicitly excluded from any definition of waste – not just clean fill for land development, but recycled materials used for drainage, road base and other purposes. We therefore support the recommendation in WA Limestone's submission that *"where a proponent can demonstrate a recycled material has value, then that material must be excluded from the waste definitions and the Landfill Levy."*

We also support WA Limestone's comments about the need for appropriate recycled material specifications to ensure the protection of public health and the environment.

Yours sincerely,



Jeff Miller
Chief Executive Officer (WA)