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Project Manager
Amendments proposed following the Eclipse decision
Department of Water Environmental Regulation
Locked Bag 33
CLOISTERS SQUARE WA 6850

By email: wastereform@dwer.wa.gov.au

Dear Sir/Madam

Amendments to *Environmental Protection Regulations 1987* to provide for use of clean fill and uncontaminated fill

The following comments are provided by the Housing Industry Association (HIA) in regards to the *Consultation Paper: Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No. 4] (2016) WASC 62*. HIA is committed to working with all sectors of government to support a regulatory environment that facilitates growth in the economy, reduces red tape, and enables the delivery of new housing in a timely and cost effective manner.

HIA supports amending the Environmental Protection Regulations (EP Regulations) following the Eclipse Resources ruling, to improve clarity around the use of fill for developments and its liability for the landfill levy. It is understood that it is not the intent of the regulations to require payment of the landfill levy where controlled development with appropriate fill materials is being carried out. However the proposed regulations leave room for varied interpretation and the associated detail results in an unnecessary cost burden on the use of processed products for fill, which has the potential to apply the landfill levy to new development and negatively impact housing affordability.

It is of concern that the regulations proposed do not exclude clean fill or uncontaminated fill from being waste. Their exclusion from the landfill levy only applies where they are used at clean fill premises. This has broad ranging implications for the use of sand products generally on sites that are not confirmed as clean fill premises. Potentially every house in suburban Perth that, for example, has any sand laid to support paving, will require registration as a landfill premises. It is understood that this is not the intent of the amendments to the regulations, and as such, further review of the mechanisms for defining waste materials should be undertaken, and the regulations updated in light of this.

The following comments discuss the implications of the detail in the proposed changes to the EP Regulations and the amendments to the Waste Definitions in the context of development in Western Australia.

The definition of **clean fill premises** in regulation 2AA includes the words “or has ever been”. A vast proportion of all new development, particularly in metropolitan Perth, will be completed on brownfields sites. This definition effectively requires the entire history of a parcel of land to be known, and further that the source of any previous fill on the site be understood. This expectation is highly impractical, with the resulting impact being that the landfill levy could effectively apply to all infill development sites in WA that utilise any fill. The words “or has ever been” should be removed from the definition.

The definition of **clean fill** in the Waste Definitions includes the words “or subject to processing of any kind”. It is typical, if not essential, for virgin sand to be screened for deleterious natural materials before being used, which would imply that all sands are instead uncontaminated fill. It is believed that this is not the intent of the definition and clarity to this point should be provided.

The definition of **uncontaminated fill** in the Waste Definitions refers to Table 1 for the maximum concentrations of substances that could be contained within a sample. It is understood that the extensive list and level of thresholds in this table are in excess of what would be reasonable for an uncontaminated fill product.

Table 2 is also referred to under the uncontaminated fill definition, and refers to an intensive testing regime. The cost of undertaking a test to meet the outcomes of Table 1 is believed to be in the order of \$500-\$800 per test. The regime requires testing effectively at a per truck rate, which although declining with increased production, is significant.

The implications of the intensity of the testing requirements are broad reaching, and littered with unintended consequences. Supply of virgin sand material is becoming constrained in the greater Perth area. As a result, there has been a strong adoption of the use of recycled sand materials for sub layers in developments. The proposed changes will result in the cost of recycled sand material increasing dramatically in excess of the current cost of virgin sand. It is therefore foreseeable that the rate of use of recycled sand will decline. Following this, more recycled sand will be moved to landfill; the cost of virgin sand will increase; pollution from the increasing length of transport for virgin sand will increase; the loss of natural bushland for the purposes of sand quarries will increase; the cost of waste disposal for building sites will increase; and the cost of land for residential purposes will increase.

None of these outcomes are preferable, and as such, the parameters and thresholds in Table 1 and the testing regime requirements in Table 2 should be reconsidered.

In their current form, the proposed regulations and associated documents do not provide a clear exemption from the land fill levy for utilising clean sand products in development sites. Further development in light of the above comments is recommended before any changes are enacted.

It is hoped that these comments provide some guidance to the review process. Please do not hesitate to contact Rachelle Gill on 9492 9219 or r.gill@hia.com.au should you have further queries at this stage.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



John Gelavis
Regional Executive Director WA