

Project Manager
Proposed regulatory amendments to categories 63-66, 89
Department of Water and Environmental Regulation (DWER)
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2 February 2018

Dear Sir/Madam

**CONSULTATION PAPER – AMENDMENTS PROPOSED FOLLOWING THE DECISION ON
*ECLIPSE RESOURCES PTY LTD V THE STATE OF WESTERN AUSTRALIA [No. 4] (2016) WASC
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Thank you for the opportunity to comment on this consultation paper (the Paper).


Wesfarmers Chemicals, Energy & Fertilisers (WesCEF) is a Division of Wesfarmers consisting of several companies. In Western Australia this includes CSBP Limited, Australian Gold Reagents (a joint venture with Coogee Chemicals) and Kleenheat, each with production facilities in the Kwinana Industrial Area which produce agricultural fertilisers, ammonia and ammonium nitrate, sodium cyanide, other industrial chemicals, LPG and LNG. These companies also have a significant regional presence with depots state-wide.

Excavation activities occur at WesCEF facilities on an ad-hoc basis, for example to prepare areas for various project work, which leads to the generation of material which may be considered 'uncontaminated fill' or 'clean fill' under the amendments proposed in this paper. It is relevant to note that many WesCEF sites have varying contamination classifications assigned by the DWER under Section 15 of the *Contaminated Sites Act 2003*. In addition, CSBP Kwinana is a licensed category 61 and 61A prescribed premises.

The waste management program implemented by WesCEF at all operational sites seeks to minimise waste generation and maximise beneficial use and recycling opportunities. With regards to this WesCEF supports the broad intent of the proposed amendments: "to ensure that the use of clean fill for development can continue" and "to allow for the use of uncontaminated fill that meets environmental and health standards after testing" (page 2 of the Paper), and in this submission provides comment on some of the detail proposed.

Proposed Amendments to category 63 to 66, and 89 of the EP Regulations

In principle WesCEF supports the proposal to amend Regulation 2AA with the insertion of the newly defined 'clean fill premises' but notes a few potential issues.




Regarding the retrospectivity of the phrase “or has ever been”, while this would allow eligible facilities previously licensed as category 63 to 66 prescribed premises to be considered exempt from future licensing and levy regimes, there are questions around how a premises would demonstrate they have only accepted ‘uncontaminated fill’ given that these thresholds are newly defined; and the number of facilities affected that may be entitled to seek refund for levies and licensing fees paid historically (assuming this is permitted legally). One possible solution could be removing the phrase “or has ever been” from the ‘clean fill premises’ definition. Premises wishing to amend their category 63 to 66 classification could consult with the DWER on a case-by-case basis.

There is also concern around the proposed ‘clean fill premises’ phrase “accepted for burial” which leads to a gap in legislative support for reuse potential where ‘clean fill’ or ‘uncontaminated fill’ is not buried at premises, e.g. used on firebreaks or to level ground. Under the proposed definition these reuse opportunities are not approved. If the material has not been “accepted for burial” the premises cannot be considered a ‘clean fill premises’, but as the material is still defined as a waste this activity could be interpreted as illegal dumping or stockpiling of waste. It is suggested that the words “for burial” be removed from the definition of a ‘clean fill premises’ but remain in the category 63 to 66 and 89 definitions. This would permit management activities that maximise the reuse potential of ‘clean fill’ and ‘uncontaminated fill’ at ‘clean fill premises’, while avoiding the negative implications of amendments to the Schedule 1 category’s “accepted for burial” wording proposed in the DWER Waste Reform Project Discussion Paper and described in WesCEF’s comments submitted to the DWER on 16 November 2017. Alternatively, the word “burial” could be replaced with a broader term such as “beneficial reuse”.

A key issue with defining ‘clean fill premises’ separately from the Schedule 1 prescribed premises categories, and hence not subject to the licensing and levy regimes, is that transfer of waste material from one location to another is authorised without regulatory control over movements, volumes, receiving environment, and compliance with waste definitions. The proposed amendments will facilitate new supply and demand markets for this material, and although responsibly-managed ‘clean fill premises’ would complete due diligence checks of accepted ‘clean fill’ and ‘uncontaminated fill’, there is no mechanism for policing this. Potential environmental and human health risk caused by rogue operators, e.g. significant volumes of material shifted from a known contaminated site to elsewhere, would be difficult to identify by the DWER if no tracking of movements and volumes exists. The above suggestion to remove the phrase “accepted for burial” poses a risk that substantial stockpiling could occur while businesses wait for new reuse markets to develop.

One option to manage this is by adding a Schedule 1 landfill class for ‘clean fill premises’, however, this would increase the burden on both the DWER and potential reuse markets. Alternatively an annual reporting or record-keeping requirement could be made for ‘clean fill premises’ or ‘clean fill’ and ‘uncontaminated fill’ in the *Landfill Waste Classification and Waste Definitions 1996* e.g. volume, location and analysis results must be maintained for a minimum of seven years.



WesCEF also queries whether the DWER will request existing landfill facilities adjust their accepted waste types and fees following the issue of any amendments to reflect the removal of waste levies from 'clean fill' and 'uncontaminated fill' waste types.

Proposed Amendment of Waste Definitions


WesCEF has a number of comments regarding the proposed amendment of waste definitions.

Regarding the 'clean fill' definition, as noted in the beginning of this submission many WesCEF sites have varying contaminated site designations, however, there are areas on each site that "are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities" (Appendix B, the Paper). It would be beneficial to have some clarity from the DWER as to whether 'clean fill' can be generated by a site classified under Section 15 of the *Contaminated Sites Act 2003*. A site which has undergone contaminated site investigations would have a clear determination of what is 'clean fill' e.g. "does not contain any acid sulfate soil... (or) any other type of waste" (Appendix B, the Paper), compared to a greenfield site which has had no scientific soil assessment undertaken. Alternatively and less preferred, if a classified contaminated site as a minimum can only generate 'uncontaminated fill' waste, requiring further sampling and analysis, it should be noted within the amendment.

There also appears to be confusion between the 'uncontaminated fill' Table 1 requirements and assessment of Type 1 inert waste in the *Landfill Waste Classification and Waste Definitions 1996*. The proposed definition for 'uncontaminated fill' includes "means inert waste type 1 (excluding asphalt and biosolids) that meets the requirements set out in Table 1" while Table 2a in the *Landfill Waste Classification and Waste Definitions 1996* defines Type 1 inert wastes as "listed below and contain contaminants in concentrations less than the specified criteria" which are implied by the document to be the Class I thresholds listed in Tables 3 and 4. Many of these values differ to those proposed in Table 1 of the amendments. It is also noted that the values proposed in Table 1 differ from those in the relevant ecological investigation levels which were previously used to validate clean fill. Evidence and justification of the source and basis for the levels provided in Table 1 of the amendments would be beneficial. Adjustment of Table 2a in the *Landfill Waste Classification and Waste Definitions 1996* would clarify 'uncontaminated fill' assessment requirements.

A few other suggestions to improve the understanding of Appendix B Table 1 include: a note explaining whether the leaching test needs to be conducted under acidic conditions e.g. using acetic acid, or using deionised water. For the *Landfill Waste Classification and Waste Definitions 1996* requirements this is usually dictated by the receiving landfill and environment, which under the proposed amendments are not regulated and unknown.

Additionally, it is noted that on page 4 of the Paper the tables in Appendix B are referred to as Tables 6 and 7, whereas in Appendix B they are instead described as Tables 1 and 2 in the 'uncontaminated fill' definition and the table titles. Some of the cells in Table 1 have been left blank e.g. Total nitrogen and Cresols Maximum Concentration, rather than populated by a '-' to align with the *note (page 11 of the Paper). The minimum requirements for Table 2 -



Testing should be expanded to require current NATA accreditation for the parameters being measured, in addition to the laboratory, for consistency with prescribed premises conditions under Part V *Environmental Protection Act 1986* licensing.

WesCEF supports legislative reform that will facilitate and simplify waste reuse opportunities. This consultation paper attempts to identify some of the risks apparent in the proposed amendments, particularly those presented by rogue operators in an unregulated market, whilst acknowledging that capturing all these risks in a regulatory framework that also tries to encourage enterprise and innovation is difficult. Perhaps a complete revision of the relevant acts and regulations with respect to the changing economic, societal and environmental waste outlook is required rather than minor amendments.

Please contact me on (08) 9411 8235 or jprosser@wescef.com.au if you would like to discuss this submission in greater detail.

Yours sincerely

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