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# Submission to Department of Environment Regulation on the Consultation paper: regulating the use of waste-derived materials

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## Introduction

The implementation of an end-of-waste regulatory framework in Western Australia should provide the clarity and incentive to facilitate the recycling of large amounts of waste materials into useful waste-derived materials that are applied to beneficial uses. As such, it has the potential to result in huge benefits to both the environment and the waste/recycling industry. The proposed end-of-waste regulatory framework is a positive initiative by the Department for Environment Regulation (DER).

## Comments on proposed approach

The proposed overall approach is strongly supported, as it provides appropriate mechanisms for the approval for a wide range of waste-derived materials. Provided the regulatory requirements (i.e. the technical specifications, required sampling regimes and restrictions of use) are commensurate with the environmental risk of the waste-derived material, then the framework should provide a relatively straightforward and quick approval process for waste-derived materials of low environmental risk, but still allow more complex cases to be assessed.

It would be helpful if the guidance statement was absolutely clear on whether a waste-derived material that met the appropriate specification and/or was assessed as appropriate for the planned use by DER was legally still a *waste* or could be called (and marketed) as a *product*. If legislative change is required to allow DER to make such an absolute determination, then that should be made clear to the industry.

It is also not clear from the consultation document how the framework will be practically implemented. It should be clarified whether companies producing waste-derived materials that meet the material guidelines would still be required to either seek approval from, or give notification to, DER for each use of a waste-derived material. This may be appropriate for some situations, but impractical for others. It would be helpful if this could be clarified during future consultation processes.

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## Comments on draft guidance statement

The guidance statement provides a good overall summary of the context and principles of the end-of-waste framework. A number of specific comments and suggestions are listed below.

### **End-of-waste criteria**

As both a principle and for practical implementation purposes, a criterion requiring waste-derived materials to have some economic value should be included.

As a principle, a product that nobody wants is really a waste. In a free-market economy, if a recycler is producing a material that can't be sold (or the recycler needs to pay to get rid of), then it is difficult to see how that material could be called a product.

In a practical sense, whether something has a monetary value (i.e. has been paid for) is a relatively straightforward criterion to assess. While it would still provide some opportunities for "gaming", it is still a surer test than trying to determine whether something "has a market".

It is acknowledged that the second proposed criterion includes the requirement "that the WDM will be used to replace a raw material". In many cases, this will be clear and will serve as an appropriate criterion. However, DER may find itself in protracted arguments about the definition of a "raw material" and whether the waste-derived material is a genuine replacement.

### **Diagrammatic representation of framework**

It would be helpful if the guidance statement included a diagram showing the overall framework and how the various documents fit within it. It would also be helpful if it included a simplified flowchart of the application and approvals process; this would highlight the two potential pathways for obtaining a determination/assessment.

### **Material guidelines**

With the exception of acid sulphate soils, the listed material guidelines focus on the proposed use of waste-derived products. While this is sound in principle, it may prove difficult to regulate in practice. It might be more straightforward to produce material guidelines than focus on a clearly defined waste material input, which stipulate appropriate waste-derived materials that can be produced from that waste stream, along with appropriate end uses.

For example, "soil conditioners" can be made from source-separated green waste from vergeside collections, crushed plasterboard, compost-like output from mechanical-biological treatment of mixed municipal solid waste or biosolids. It would be inappropriate and unfair to apply the same regulatory regime to each of these waste streams. Further, many organic soil conditioners are made from many

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different organic materials, and organic waste forms only a relatively small proportion of the feedstock. By focusing on the end product, it may actually discourage the use of organic waste material, because processors might find it easier to use alternative feedstocks. Another example is that treated acid sulphate soils could be utilised as waste-derived fill, or in soil conditioners. Therefore, it may become difficult to prepare guidelines that are consistent for all waste streams that are used to produce fill or soil conditioners, as well as for acid sulphate soils.

Focussing on the input waste material would also clarify at what point in the “supply chain” the guidelines apply.

The material guidelines themselves may address these issues. However, a clear and consistent structure would assist in the implementation of these initial guidelines and facilitate development of future guidelines.

## Responses to consultation questions

### Question 1

- a) The five waste-derived materials chosen by DER to have guidelines developed first are appropriate, as they reflect they are derived from waste materials that are generated in the greatest volumes, and are relatively easy to recycle into saleable products.
- b) As per the comments above, the material guidelines should focus on the input waste stream, rather than the end product. Material guidelines should be developed for demolition waste used to produce waste-derived fill, source-separated garden organics used to produce soil conditioners, construction and demolition waste used to produce construction products and treated acid-sulfate soils as a priority. It should be possible to develop these guidelines concurrently, as they involve different segments of the industry.

### Question 2

- a) Yes, I would be interested in participating in a workshop on this topic.
- b) I would be interested in being involved in any consultation on any waste streams proposed for inclusion in the end-of-waste framework.

### Question 3

A flat fee should apply to those waste streams that meet the material guidelines. A sliding fee based on the degree of work involved should apply to case-by-case determinations.