

**WMAA Submission on the
Department of Environment Regulation Guidance Statement:
Regulating the Use of Waste Derived Materials**

Introduction

The Waste Management Association of Australia (WA Branch) is the peak body for waste management professionals in Australia and has nearly 300 members in WA. The Association appreciates the opportunity to comment on the Draft Guidance Statement and the specific recognition of the Association in the document.

To develop this Submission the Association held a workshop and invited comments from the WMAA WA Executive Committee and general membership. Members from a range of different sectors within the waste industry provided comment.

General Comments

Members of the Association expressed a range of views regarding the regulation of waste derived materials, some were not convinced of the need for additional regulation and others expressed concern that the approach proposed by the Department was not an effective way to regulate the materials. Alternative approaches were suggested including:

- Development of a 'generic' approvals process, with specific technical guidance, modelled on the Victorian *Environment Protection (Industrial Waste Resource) Regulations 2009*.
- A 'Code of Practice' or a 'Guidance Note' is used, in a similar manner to under the Occupational Safety & Health Act.

The reason for the 'generic' approach suggested, was the concern that a huge number of different Guidelines would be developed, making the system more complex than it needed to be.

Recommendation: That the Department review the proposed approach to regulating waste derived materials within 2 years and consider other approaches.

Issues of classification were discussed at the workshop, particularly whether a waste that complied with the relevant Guideline would be considered a 'product' or a waste. The advantage of the 'product' classification related to how the use of the material would then be viewed under consumer law. Also if meeting the Guidelines does not provide this type of certainty about the material and its use, then operators may be disinclined to use it. The Association considers that a clear statement as to the benefits of a material no longer being classified as a waste needs to be developed. This statement should include the regulatory benefits.

Recommendation: That the Department give consideration to classifying waste derived material, that is compliant with the relevant Guidelines, as a 'product'.

Recommendation: That the Department develop a clear statement as to the benefits of a material no longer being considered a waste.

It was strongly recommended the Guidelines developed are simple and easy to use. Concern was expressed that organisations could be excluded from entering the market if the requirements were too complicated.

The advantage of having Guidelines which covered all Departments regulatory requirements was highlighted. The example was given of the Guidelines for Managing Asbestos at Construction and Demolition Waste Recycling Facilities which met Department of Health, Department of Environment Regulations and Main Roads requirements.

Recommendation: That the Guidelines cover all Departmental regulatory requirements for the specific material.

Attendees questioned what stage of the process the Guidelines would apply to, initial producer or end user. For example, who would need to comply with the Guidelines in the case of an alternative waste treatment plant producing organic material, which is then blended and on sold by another organisation.

Questions

Question 1:

- a) Which waste streams should DER develop material guidelines for?
- b) What do you think the priority order for the development of material guidelines should be and why?

Rather than provide a list of waste streams, the Associations suggested approach is that criteria be used to assess whether to develop a Guideline. The criteria would be:

- Large amount of material in the waste stream;
- There is a 'market' in the broadest sense or beneficial use for the material; and
- There is a need for further regulation of the end market.

In future, if a range of case by case applications for the same material are received, it is suggested that this is added to the criteria. The Association considers that the priority order should be determined by the relevance to the suggested criteria.

Members commented that the proposed 'soil conditioners' material guidelines were likely to be very broad and it was suggested that a more specific guideline may be needed for a range of products.

Question 2:

- a) *Are you willing to participate in workshop to help inform the development of material guidelines?*
- b) *If so, which waste streams would you like to be involved with?*

The Association and its members are keen to engage in workshops to inform the development of all material guidelines.

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Question 3: How should DER's costs associated with regulating waste-derived materials be recouped from the industry?

The Associations preference is for no fee to be attached to general applications, which relate to Guidelines. If a fee must be charged, the preference for general applications is a small, flat fee. For general applications that apply to licensed premises, no fee should apply, as those facilities already pay a license fee, as per the Asbestos Guidelines.

For the case by case applications, a different approach is supported, where cost would be based on the complexity of the application. Members suggested an approach similar to assessments under the Contaminated Sites Act would be appropriate, whereby the proponent prepares the application which is then assessed by an independent auditor.

Waste derived material may have very limited markets and any additional costs are likely to have a detrimental effect on willingness to enter these markets. To encourage market development, then minimal additional costs should be put in place.

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