



Fact sheet

Waste levy exemption 5(1)(c) - Waste removed from an orphan site

Overview

The *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) provide for a levy to be paid for waste (waste levy) received at licensed landfills in the Perth metropolitan region and waste collected within the Perth metropolitan region that is received at licensed landfills outside of the metropolitan region.

Regulation 5 of the WARR Levy Regulations outlines categories of exemptions where the waste levy will not apply to waste received at licensed landfills if an application for an exemption is granted.

Regulation 5(1)(c) allows licensees of landfills to claim, by application, an exemption for waste reasonably removed from an orphan contaminated site.

Exemption for waste from orphan contaminated sites

This exemption has four criteria:

1. the waste originated from an orphan site as defined in section 32 of the *Contaminated Sites Act 2003*
2. the waste has been reasonably removed
3. the waste was removed from the orphan site by a public authority
4. the waste was removed from the orphan site to mitigate or prevent a risk of harm to human health or the environment.

To apply for this exemption, the licensee must complete and submit to the Department of Water and Environmental Regulation (the department) the [approved form](#) and provide the information referred to in that form.

What is an orphan site?

An orphan site is a site that has been taken over by the state for reasons detailed in section 32 of the [Contaminated Sites Act 2003](#). In an application for an exemption, the licensee must demonstrate that the contaminated site meets the definition and requirements of an orphan site.

What is reasonably removed?

The WARR Levy Regulations define 'reasonably removed' in relation to waste as meaning: "removed in circumstances where alternative methods of dealing with the waste are impracticable".

In an application for an exemption under regulation 5(1)(c) the licensee should provide evidence to support the position that the waste was reasonably removed.

What is a public authority?

Section 3 of the *Waste Avoidance and Resource Recovery Act 2007* defines a public authority as either:

- a) an agency or organisation as those terms are defined in the *Public Sector Management Act 1994*
- b) a body, corporate or unincorporate, that is established or continued for a public purpose by the state, regardless of the way it is established
- c) a local government.

In an application for exemption, the licensee must provide the details showing that the relevant public authority removed the waste from the orphan site.

What is removal to mitigate or prevent a risk of harm to human health or the environment?

In an application for exemption the licensee must supply evidence that the waste will present a risk of harm to human health or the environment if it is not removed from the site. This may include the classification of the site under the *Contaminated Sites Act 2003* or extracts from site remediation reports.

Are there any restrictions on the amount of waste under this exemption?

No, the WARR Levy Regulations do not apply any restrictions on the amount of waste that can be exempted under regulation (5)(1)(c). In the application, the licensee must state the total amount of waste that the exemption relates to and provide evidence to substantiate the amount claimed.

When should I apply for this exemption?

It is recommended that licensees submit the exemption application prior to accepting the waste to ensure that the material will not be subject to the waste levy; however, retrospective applications will be considered.

How do I apply for this exemption?

The licensee of a landfill can apply to the department for an exemption under regulation 5(1)(c) by completing the approved [application form](#) and submitting to wastelevy@dwer.wa.gov.au.

How is an exemption application assessed?

The Chief Executive Officer (CEO) of the department, or their delegate, will assess the information provided in the approved form to determine if it meets the requirements of the exemption under the WARR Levy Regulations.

Following this assessment, the CEO will grant or refuse an exemption.

Conditions of exemptions

If an exemption application is approved, the licensee will be issued with an exemption notice. The exemption notice may be subject to conditions or limited to

circumstances set out in the notice. Regulation 5(5A) of the WARR Levy Regulations specifies examples of conditions that may be imposed.

What happens if a condition of an exemption is breached?

Under regulation 5(6) of the WARR Levy Regulations, the exemption ceases to have effect if any condition of an exemption notice is breached.

Will I be notified of the outcome of my application?

If the CEO decides to approve an exemption application, the licensee will receive a written notice of this decision.

If the CEO intends to refuse an exemption application, the licensee will be provided with a draft decision document outlining the reasons why the CEO intends to refuse the application. The licensee will generally have 21 business days to respond to the draft decision document before the CEO makes a final decision.

While the time required to assess an exemption application varies, generally a decision will be made within 30 business days following the receipt of a complete application.

Can I appeal an exemption decision?

If the CEO refuses an exemption application or imposes conditions or limitations that the licensee does not agree with, the licensee may apply to the State Administrative Tribunal (Tribunal) for a review of the decision.

An application for review of the CEO's decision is made to the Tribunal directly. Information about applying to the Tribunal is available [online](#).

Can I charge a fee to accept this waste?

The department generally places a condition on exemptions granted under regulation 5(1)(c) requiring that the waste holder is not charged the waste levy component of any waste acceptance fees for the exempted waste. However, landfilling fees can be charged.

Do I have to pay the waste levy while my exemption application is being assessed?

A licensee must pay the waste levy by the due date, including any levy payable for waste that is the subject of a pending exemption application.

The due date is 28 days after the end of the relevant return period. If payment is not received in full by the due date, a penalty is payable on the overdue amount calculated at a rate of 20 per cent per annum.

If the exemption is granted retrospectively, the department will refund the licensee the amount of waste levy overpaid and any penalty paid on that amount.

Alternatively, the department may credit the licensee with these amounts, if the licensee so elects.

It is recommended that exemption applications be submitted in accordance with the submission dates outlined in the [Guideline – Waste levy exemptions](#).

How long does an exemption last?

All exemption notices will specify the period for which the exemption is valid. The validity period specified in the exemption notice will vary depending upon the circumstances of the exemption.

An exemption ceases to have effect at the conclusion of the validity period or immediately if an exemption condition is breached.

Calculating the amount of exempt waste for each return period

Following the issue of an exemption notice, licensees will need to calculate the amount of exempt waste for each return period.

Category 63 (Class I) landfills

For licensed landfills in the metropolitan region, the volume of exempt waste must be estimated in the [Approved manner for estimating the volume or weight of waste received at and disposed of to landfills](#) (the approved manner), in accordance with regulation 10(8) of the WARR Levy Regulations.

For licensed landfills outside the metropolitan area that have received waste collected within the metropolitan area, the volume of exempt waste must be estimated in the approved manner in accordance with regulation 12A(2)(b).

Category 64 (Class II and III) and 65 (Class IV) landfills

Under regulation 8, the weight of exempt waste received must be calculated using the landfill's weighbridge, unless the landfill does not have a weighbridge or the licensee has obtained an exemption from the requirement to weigh waste on a weighbridge under regulation 5(2).

If the landfill does not have a weighbridge, or the licensee has been granted an exemption from the requirement to weigh waste on a weighbridge, the weight of exempt waste must be estimated in the approved manner in accordance with regulation 9(2A).

More information

Please contact the department on 6364 6963 for further advice on waste levy exemptions or related matters.

This document is available in alternative formats and other languages on request.

Effective February 2021.

Related documents (if applicable)

Additional publications about waste levy exemptions are available [online](#).

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. Please refer to Western Australian Legislation for copies of the relevant legislation, available electronically from the Parliamentary Counsel's Office [website](#).

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Legal advice

The information provided to you by the department in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, the department recommends that you obtain independent legal advice.