



Fact sheet

Waste Levy exemption 5(3A) - Uncontaminated soil or other clean fill that is received at a licensed landfill for final cover before 5 February 2020

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 received at licensed landfills in the 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 exemptions where the waste levy will not apply to waste received at licensed landfills if an exemption is granted.

Regulation 5(3A) of the WARR Levy Regulations permits licensees of category 63, 64 or 65 landfills to apply for an exemption for uncontaminated soil or other clean fill received at the licensed landfill before the day on which regulation 4 of the *Waste Avoidance and Resource Recovery Amendment Regulations 2020* comes into operation if the waste is, or will be, used after the completion of landfill operations to cover, to a depth of up to 500 mm, waste disposed of on the premises.

Regulation 4 of the *Waste Avoidance and Resource Recovery Amendment Regulations 2020* commenced on 5 February 2020. Consequently, this exemption is only applicable to waste received at a licensed landfill before this date.

It is recommended that licensed landfills contact the Department of Water and Environmental Regulation before applying for an exemption under regulation 5(3A) to discuss if they are eligible to apply for the new final cover exemption under regulation 5(1)(a) of the WARR Levy Regulations.

Under regulation 5(1)(a), a licensee can apply for a levy exemption for waste applied as final cover at the completion of landfill operations as required under conditions of a Ministerial Statement or Part V Division 3 licence under the *Environmental Protection Act 1986* (EP Act). Please refer to the [fact sheet](#) on regulation 5(1)(a) for more information.

Exemption for waste used as final cover

The exemption will only apply in the following circumstances:

1. the waste is uncontaminated soil or clean fill
2. the waste was received at the landfill before 5 February 2020
3. the waste is, or will be, used after the completion of landfill operations to cover, to a depth of up to 500 mm, waste disposed of on the premises



4. the waste was accepted at the landfill at no charge.

To apply for this exemption the licensee must complete and submit to the department the approved [Application for exemption under regulation 5\(3A\)](#) form and provide the information referred to in that form.

What is 'uncontaminated soil' or 'clean fill'?

The terms 'uncontaminated soil' and 'clean fill' are not defined in the WARR Levy Act or the WARR Levy Regulations.

'Clean fill' is defined in the [Landfill Waste Classification and Waste Definitions 1996 \(as amended 2019\)](#) (LWCWD) as:

raw excavated natural material such as clay, gravel, sand, soil or rock fines that:

- a) has been excavated or removed from the earth in areas that have not been subject to potentially contaminating land uses including industrial, commercial, mining or agricultural activities; and
- b) has not been processed except for the purposes of:
 - i. achieving desired particle size distribution; and/or
 - ii. removing naturally occurring organic materials such as roots; and
- c) does not contain any acid sulfate soil; and
- d) does not contain any other type of waste.

The term 'uncontaminated soil' is interpreted as 'uncontaminated fill' as defined in the LWCWD:

- a) inert waste type 1 (excluding asphalt and biosolids) that meets the requirements set out in Table 6, as determined by relevant sampling and testing carried out in accordance with the requirements set out in Table 7; and
- b) neutralised acid sulfate soil that meets the requirements for relevant metals, metalloids and sulfate set out in Table 6, as determined by relevant sampling and testing carried out in accordance with the requirements of Table 7.1

Can I charge a fee when accepting final cover waste material?

To be eligible for an exemption under regulation 5(3A), the licensee must demonstrate that the waste subject to the exemption was accepted free of charge, including any administrative or handling fees.

Failure to demonstrate that the waste was accepted free of charge will result in the exemption application being refused.

¹ The references to Table 6 and Table 7 in this definition are references to tables in the LWCWD.



How do I calculate how much final cover I can claim?

The amount of cover material for which an application for exemption can be claimed will vary depending upon the landfill.

Under this exemption, a licensee can apply for final cover that is applied (or will be applied) after the completion of landfill operations to a depth of 500 mm. Additional final cover that exceeds the 500 mm depth cannot be subject to an exemption under regulation 5(3A).

The information that must be submitted with an application under regulation 5(3A) is outlined in the approved [form](#).

Please note this final cover exemption is specific to waste that is, or will be, used after the *completion* of landfill operations.

Waste used to temporarily cover individual cells that are closed from time to time as part of normal operations at the site cannot be the subject of a regulation 5(3A) exemption. Only the final layer of waste, which signifies the completion of the landfill operations at that landfill disposal cell, can be considered under this exemption.

Does this exemption apply to daily cover?

The requirement to apply daily cover may exist pursuant to conditions of the landfill licence. However, an exemption for daily cover cannot be granted under regulation 5(3A), as this regulation only applies to cover that is, or will be, used after the completion of landfill operations.

The requirement to apply daily cover over waste at category 64 and 65 licensed landfills is already addressed through formulas for calculating levy liability under the WARR Levy Regulations.

Under regulation 12(2) of the WARR Levy Regulations, the levy is only payable on 92% of the non-exempt waste disposed of to landfill at category 64 and 65 landfills. This 8% deduction in the levy payable reflects the need for select landfills to apply daily cover as part of regulatory requirements.

When should I seek an exemption for final cover applied at licensed landfills under regulations 5(1)(a) or 1(h)?

The requirement for applying final cover and capping at a landfill will likely arise in one of two circumstances:

1. as a result of a Ministerial statement or licence condition to cover waste disposed of at the landfill after the completion of landfill operations
2. as a result of a closure notice being issued under the provisions of section 68A(2) of the EP Act.

If waste is, or will be, used for final cover and capping as required pursuant to a condition of a licence or Ministerial Statement, an exemption under regulation 5(1)(a)



may be granted.

It is recommended licensees consider the regulation 5(1)(a) exemption if they are required under their licence or Ministerial Statement to apply more than 500 mm of final cover after the completion of landfill operations. Please contact the department if you have questions on this matter.

If the final cover and capping at a licensed landfill is required as a result of a closure notice issued under section 68A of the EP Act, a waste levy exemption can be sought under regulation 5(1)(h) of the WARR Levy Regulations.

When should I apply for this exemption?

Exemptions under regulation 5(3A) are generally issued for a period of 12 months, coinciding with the financial year.

An application should be submitted prior to 30 June of each year. However, retrospective applications (i.e. applications submitted after the levy has become payable or has been paid) will be considered. It is recommended that applications are submitted prior to cover material being received by the landfill to ensure that the material will not be subject to a levy.

How do I apply for this exemption?

The licensee of a landfill can apply to the department for an exemption under regulation 5(3A) by completing and submitting application form [Application for exemption under regulation 5\(3A\)](#).

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 process, the CEO will grant or refuse an exemption.

Generally a decision about the outcome of an exemption will usually be made within 30 business days following the receipt of a complete application.

Conditions of exemptions

If an exemption application is granted, the licensee will be issued with an exemption notice. The exemption 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 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 grants an exemption, 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.

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 directly to the State Administrative Tribunal for a review of the decision. Information about applying to the Tribunal is available at: www.sat.justice.wa.gov.au/.

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

A licensee must pay the 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 annum.

If the exemption is granted retrospectively, the department will refund the licensee the amount of 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 that the exemption is valid for. 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 must calculate or estimate the amount of exempt waste to claim 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 January 2020

Related documents (if applicable)

Additional publications about Waste Levy exemptions are available online at:
www.der.wa.gov.au/your-environment/waste/151-landfill-levy.

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 at www.legislation.wa.gov.au

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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.