



Waste levy exemption – asbestos containing material

Levy overview

The *Waste Avoidance and Resource Recovery Levy Act 2007* imposes a levy in respect of certain waste received at metropolitan landfills, and metropolitan waste received at landfills outside the metropolitan area.

Exemptions

The *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) provide a range of exemptions under r.5 from requirements of the WARR Levy Regulations.

Exemption types

There are 11 types of exemptions available under the WARR Levy Regulations. To assist landfills in identifying exemptions which may be applicable to their situation, factsheets have been developed for each exemption type.

This factsheet discusses exemptions under r.5(1)(i).

Exemption for asbestos containing material

The WARR Levy Regulations, under r.5(1)(i), allow licensees of landfills to seek an exemption from paying the levy on asbestos containing materials (ACMs) accepted into the landfill.

This exemption has two criteria:

1. ACMs must be transported to the licensed landfill in accordance with r 44 of *Environmental Protection (Controlled Waste) Regulations 2004* (Controlled Waste Regulations).

2. ACMs must be buried at the landfill in compliance with the conditions of the landfill's licence.

5(1)
(i) asbestos containing material if the material is-
(i) taken to the licensed landfill otherwise than in contravention of the *Environmental Protection (Controlled Waste) Regulations 2004* regulation 44; and
(ii) buried at the licensed landfill in compliance with the conditions on the licence.

To apply for this exemption, the licensee must complete and submit Form LL02-11.

What are asbestos containing materials?

Under r.5(1A), ACMs are defined as any manufactured material or thing that, as part of its design, contains asbestos.

Are all wastes containing asbestos ACMs?

No, some types of waste asbestos do not meet the definition of an ACM.

ACMs are items which contain asbestos as part of their original design. The asbestos has been purposefully included in the item for a specific reason.

Asbestos wastes which are not considered ACMs are generally materials such as sand,

soil or waste which has been contaminated with asbestos. Examples of asbestos wastes which are **not** ACMs include:

1. Asbestos contaminated soils;
2. Sand or other waste mixed with asbestos fibres; and
3. Mixed loads where the asbestos containing materials could reasonably be separated from other wastes.

What types of wastes are ACMs?

ACMs can generally be divided into two groups, bonded asbestos products and friable asbestos products. Examples from each group are detailed below.

- *Bonded asbestos products*
 - roofing
 - shingles and siding
 - exterior and interior wall cladding
 - eaves
 - fencing
 - thermal boards
 - water and flue pipes
- *Friable asbestos products*
 - rope door gaskets in wood stoves
 - loose fill roofing insulation
 - spray-on insulation or sound proofing
 - low density asbestos fibre board
 - insulation on hot water pipes or domestic heaters or stoves (lagging)
 - backing for floor tiles and vinyl flooring
 - carpet underlay
 - textured paints or decorative ceiling coatings
 - heat resistant fabrics
 - brick and plaster sealants or fillers
 - adhesive products
 - damaged or badly weathered bonded asbestos products

Can I seek an exemption for waste asbestos which is not an ACM?

No, the exemption under r.5(1)(i) is specifically for ACMs. The levy is payable on other asbestos contaminated wastes received at the licensed landfill.

When should I apply for this exemption?

The Department recommends applications for exemptions under r.5(1)(i) are submitted for a financial year (four return periods).

To allow adequate time for assessment of exemption applications, the Department recommends exemption applications are submitted before 31 July of the financial year the exemption is sought for.

Regulation 44 of Controlled Waste Regulations

The Controlled Waste Regulations regulate the transportation of controlled wastes on roads within Western Australia.

Asbestos is a controlled waste and therefore its transportation is subject to requirements under the Controlled Waste Regulations. The Controlled Waste Regulations apply to the transportation of all types of asbestos e.g. ACMs, asbestos contaminated soil and mixed loads contaminated with asbestos.

A summary of the requirements under r.44 of the Controlled Waste Regulations are detailed below

1. Asbestos must be separated from other material for disposal where that is reasonably practicable;

2. Wrapped or otherwise contained in a manner that prevents asbestos fibres entering the atmosphere during transportation on a road; and
3. Labelled or marked with the words “CAUTION ASBESTOS” in letters not less than 50mm high.

The Controlled Waste Regulations can be found at the State Law Publisher (www.slp.wa.gov.au).

Can all landfills accept ACMs?

No, if your landfill is able to accept asbestos it will be stated on your licence that you are able to accept Special Waste Type 1. If your licence does not mention asbestos, then your landfill does not have permission to accept asbestos. If you are unsure about whether your landfill can accept asbestos, please contact DWER.

Some licences may contain specific conditions pertaining to asbestos such as where on the premises it can be buried. In order to be granted an exemption under r.5(1)(i), you will need to declare that any ACMs accepted under the exemption will be buried in accordance with any requirements on your licence.

How do I apply for this exemption?

The licensee of a landfill can apply to the Department for an exemption under r.5(1)(i) by completing and submitting application form LL02-11.

How is an exemption application assessed?

The CEO of the Department will grant or refuse an exemption request.

The CEO may, by written notice –

- (a) grant, or refuse to grant, an exemption; or
- (b) grant an exemption subject to conditions, or limited to circumstances, specified in the notice; or
- (c) revoke an exemption

This decision is based on the appropriateness of the request and its compliance with the criteria of the particular exemption sought.

The Department’s assessment criteria for exemptions under r.5(1)(i) are:

1. ACM is transported to the licensed landfill wrapped or otherwise contained in a manner which prevents asbestos fibres entering the atmosphere.
2. ACM is transported to the licensed landfill with a label or marking stating “CAUTION ASBESTOS” in letters not less than 50mm high.
3. ACM is separated from other material for disposal where reasonable practicable.
4. Licensed landfill’s licence allows the acceptance of Special Waste Type 1- asbestos.
5. Licensed landfill will bury the ACM in accordance with conditions of its licence.

Conditions of exemptions

If an exemption application is approved, the licensee will be issued with an exemption notice. The exemption notice may contain conditions to which the exemption has been granted subject to.

In accordance with regulation 5(5A) conditions may include requirements to:

- Remove, reuse or recycle exempt waste within a specified time;
- Store or use the exempted waste in accordance with specified requirements;
- Measure exempted waste in accordance with specified criteria;
- Keep specified records regarding quantity, nature and location of exempted waste and payments received for that waste;
- Provide requested reports to the CEO regarding acceptance, storage, removal, reuse or recycling of exempted waste; and
- Amount of exempted waste.

What happens if a condition of an exemption is breached?

Under the WARR Levy Regulations, if any condition of an exemption notice is breached, the entire exemption ceases to have effect.

5(6)
If a condition subject to which an exemption is given is breached, the exemption ceases to have effect.

That is, the previously granted exemption has no effect from the date of the breach of the relevant condition of an exemption.

If a person continues to operate as if the previously granted exemption is still in force, an offence is likely to be committed.

DWER conducts regular inspections of landfills and audits of levy returns to assess compliance with the WARR Levy Regulations and exemption conditions.

Will I be notified of the outcome of my application?

Yes, the applicant will be advised in writing of the outcome of their exemption application.

If the exemption application is being granted, an exemption notice will be issued.

If the exemption application is not being granted, a draft Decision Document outlining the reasons for refusal will be provided to the applicant for comment. The applicant will have 21 business days to respond to the draft Decision Document before DWER finalises the decision.

Can I charge to accept this waste?

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

It is in the public interest that ACMs are appropriately disposed and this exemption assists in ensuring the cost of asbestos disposal does not discourage waste holders from disposing of this waste correctly. However, to be effective the cost saving of being levy exempt needs to be passed onto waste holders rather than retained by landfills.

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

Yes, unless a valid exemption notice is in place, waste is not exempted from the levy.

If a levy return is due while your exemption application is being assessed you are required to comply with the WARR Levy Regulations

and include the waste on your return and forward any levy payable.

It is recommended that exemption applications applicable to the full financial year are submitted by 31 July. Exemption applications applicable to a particular return period should be submitted at least 28 days prior to the levy return being due.

Can I appeal an exemption decision?

Yes, if an exemption application is refused or a licensee is aggrieved by the conditions or limitations imposed on an exemption notice, the licensee may apply to the State Administrative Tribunal for a review of the decision.

6 (1) A person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision

The applicant will need to contact the State Administrative Tribunal directly.

Contact information for the State Administrative Tribunal is available at: www.sat.justice.wa.gov.au

How long does an exemption last?

All Exemption Notices will specify the period that the exemption applies.

5(5)
In an exemption notice for waste referred to in sub regulation (1) the CEO must specify the period for which the exemption applies

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) landfill

For landfills in the metropolitan region, the amount of exempt waste buried should be calculated in the approved manner in accordance with r.10(8).

For landfills outside the metropolitan area who have received waste collected within the metropolitan area, the amount of exempt waste buried should be calculated in the approved manner in accordance with r.12A(2)(b).

12A
(2)(b)
is to estimate, in the approved manner, the number of cubic metres of any portion of waste for which an exemption on application under regulation 5(1) is in effect.

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

The amount of exempt waste received should be calculated using the landfill's weighbridge.

For landfills without a weighbridge, or who have a valid exemption under r.5(2), the volume of exempt waste should be calculated using the approved manner in accordance with r.9(2A).

9 (2A)

If waste is received at a licensed landfill, referred to in sub regulation (1)(a) or (b) and disposed to landfill during a return period, the licensee of the landfill is to estimate in the approved manner, the weight of any portion of that waste for which an exemption granted on application under regulation 5(1) is in effect.

What is the Approved Manner?

The Department's *Environmental Standard: Approved manner for estimating the volume or weight of waste received at and disposed of to landfill* specifies the appropriate approved manner for landfills. The approved manner varies according to the landfill type, its location and whether it has a weighbridge, therefore it is important that licensees review the document to determine the approved manner relevant to their circumstances.

The Environmental Standard is available at the following location (https://www.der.wa.gov.au/images/document/s/your-environment/waste/WARR_Landfill/es-approved-manner-landfills.pdf).

Penalties

Breaches of the WARR Levy Regulations may attract fines of up to \$10,000 for an individual and up to \$50,000 for a body corporate (s.40(5) Sentencing Act (1995)) as determined by a court.

More information

For assistance with completing exemption application forms or related waste levy matters, please contact DWER on 6364 5000.

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

Related documents

Approved exemption application form for asbestos containing materials and other exemption application forms are available online from <https://www.der.wa.gov.au/your-environment/waste>.

Additional publications about waste management are available online from www.dwer.wa.gov.au.

- Controlled waste fact sheet no. 16
- www.dwer.wa.gov.au
- www.wasteauthority.wa.gov.au

or can be requested by phoning 6364 5000.

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 the State Law Publisher (SLP) for copies of the relevant legislation, available electronically from the SLP website at www.slp.wa.gov.au

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