

Energy from Waste Parliamentary Inquiry

NSW EPA: Response to pre-hearing questions

Introductory statement

Since its re-establishment in 2012 the NSW EPA has been the subject of more than a dozen independent reviews of its regulatory operations, specific functions or overall performance. These reviews have essentially come about due to media reports that have been factually incorrect, sensationalist, unnecessarily alarmist or misleading. Further media coverage of the reviews has in turn encouraged individuals or groups to perceive ongoing issues with the EPA's regulatory performance and subsequently call for more reviews. None of these reviews found systemic issues or problems with the EPA and, in many cases reported positive findings of the EPA's performance.

As an exemplar organisation, we welcome scrutiny and we strive to continue to be a best practice regulator. This is underpinned by our formal issue debriefs, robust internal audit program and regular engagement to ensure we continue to improve through objectively learning from our experiences, informed review and the considered views of our stakeholders.

Notwithstanding the significant distraction, diversion of resources and impact on staff morale these continuous reviews have caused, the EPA and its staff have continued to effectively and demonstrably deliver on our responsibilities to a high standard.

Investigations and enforcement

1. Your 2015–16 annual report advises that there has been a 96% increase in the number of illegal dumping investigations. According to the report, of the 40 prosecutions that were completed by your agency in 2015–16, only six of these cases related to large-scale illegal dumping practices.

The committee has received evidence suggesting that the investigative and enforcement powers of your agency are undermined by a range of factors including a lack of resources, inexperienced investigation officers and management, and a culture of apathy within the agency.

Amongst other concerns, the committee was told that the confluence of these factors has allowed rogue and criminal elements to flourish in the waste industry. Overall, there is a perception that your agency does not have the requisite capability to regulate the waste industry.

Please respond to these suggestions and advise of how you will address these issues including information regarding:

- a. how many illegal dumping incidents were investigated over the past five years
- b. qualification and training requirements for investigative officers and their managers
- c. why there is no stand-alone investigation and enforcement unit for illegal dumping and illegal landfilling
- d. statistics on the length of time between when a complaint is lodged and an investigation is completed (indicate whether there are KPIs pursued regarding this issue)
- e. efforts to foster a workplace culture that encourages the timely pursuit of investigations
- f. engagement with the NSW Police Force to pursue criminal activity (for example, what are the procedures for intelligence sharing, providing briefs of evidence and participation in other evidence gathering endeavours such as raids)
- g. engagement with the Legal Services Division of the Office of Environment and Heritage when supporting investigations and pursuing prosecutions.

Response

The waste industry and the waste levy

Waste is a multi-billion-dollar industry in NSW that is made up of operators across the entire business spectrum, from large multinational corporations through to sole traders.

This diversity makes the EPA's role as a regulator of the waste industry both complex and challenging. Effective regulation requires ongoing regulatory reform to keep pace with highly innovative and agile industry stakeholders and discourage unlawful activities such as illegal dumping and waste levy avoidance.

The waste levy is the key economic instrument used in NSW to discourage landfilling and stimulate resource recovery. It effectively increases the cost of landfilling, which makes the cost of recycling more competitive and ensures landfill is the least preferable waste management option – outcomes which are consistent with the waste hierarchy and good environmental practices.

The levy has collected much needed funding for waste and recycling infrastructure and programs, including the *Waste Less, Recycle More* program. This program, which is the largest program of its kind in Australia, provides \$802 million over a nine-year period to 2021. The program aims to:

- stimulate investment in new and upgraded waste and recycling facilities and infrastructure
- change community attitudes to encourage re-use and recycling
- strengthen compliance and enforcement, with \$123 million dedicated to these activities.

The levy has driven innovation and investment in new and upgraded recycling infrastructure, which has helped increase recycling rates in NSW from 45% in 2002–03 to 63% in 2014–15. By contrast, the recycling rate in Queensland, which has no waste levy, is only 35%.

The levy applies to every tonne of waste that is sent to landfill. At a cost of \$138.20 per tonne in the Metropolitan Areas of NSW, it provides a strong incentive to recycle.

Disreputable operators may seek to avoid the levy and make a financial gain by either illegally dumping or illegally landfilling the waste, or by transporting it to Queensland.

The opportunity for profiting from unlawful activities means that there is a persistent criminal element in the waste industry that is both agile and difficult to neutralise. While much has been done to improve compliance, including the introduction of specific requirements that apply to those who transport waste, any person holding a truck licence can become a waste transporter (there are currently over 330,000 NSW licences for trucks over eight tonnes).

This is an issue that neither specific regulatory requirements nor licencing can easily fix, as the low barrier to entry will continue to attract those who have no regard for the laws put in place to protect the environment. The problem is exacerbated by the high level of sub-contracting in the industry leading to difficulties in establishing evidence of accountability for illegal waste dumping.

The waste industry in NSW has many professional and highly organised stakeholders and associations that want to do the right thing, as demonstrated by initiatives such as the Waste Management Association of Australia's pledge to not haul waste to Queensland.

While the vast majority of stakeholders in the NSW waste industry are law-abiding and committed to ensure it remains innovative and sustainable, a small proportion of the industry is taking an unfair competitive advantage, which pressures others to do the same to remain commercially viable.

The EPA's approach to regulation

The NSW EPA strives to be an exemplar organisation which takes strong and appropriate regulatory action. As a modern regulator, we use a combination of tools to effectively regulate the waste industry, and apply a responsive and risk-based approach to our regulatory functions.

To encourage voluntary compliance, the EPA works hard to maintain contemporary legislative and policy frameworks that provide regulatory certainty to industry. We develop guidelines and deliver a range of education and support campaigns to build understanding of regulatory requirements and provide assistance to the regulated community. We also use licensing to regulate high-risk activities.

Under the *Protection of the Environment Administration Act 1991* (POEA Act) the EPA is responsible for investigating and reporting on alleged non-compliance with environment protection legislation for the purposes of prosecution or other regulatory action. We use several key channels to identify non-compliances, including:

- encouraging reporting of illegal activity through Environment Line (a one-stop pollution and environmental incident reporting service)
- RIDonline (an online reporting service for illegal dumping)
- analysis of waste and recycling facility reporting data captured through our Waste and Resource Reporting Portal (WaRRP)
- our strong relationships with local councils and other regulatory agencies.

From time to time, the EPA also undertakes proactive compliance campaigns to target particular industries, individuals or issues where we identify repeat non-compliances.

The NSW EPA is Australia's leading environmental regulator. Our best practice is evidenced by the results of regular external scrutiny, comparisons with other jurisdictions and our own ongoing examination and review. Where non-compliances are detected, we aim to take enforcement action that is proportional, drives behavioural change, and delivers maximum benefit to the NSW community from available compliance resources. The EPA's publicly available *Regulatory Position Statement* and *Compliance Policy* summarise our approach to compliance and enforcement.

The EPA implements an escalating response to non-compliances based on a range of factors such as the nature, significance and impact of the issue or non-compliance as well as the offender's compliance history and attitude to compliance. Any action taken by the EPA aims to ensure that environmental impacts are contained, minimised or made good, and the sanction applied reflects the seriousness of the incident and acts as a deterrent to re-offending.

The *EPA Compliance Policy* sets out the principles that underpin our approach. These include being responsive and effective, targeted and proportional in our regulatory actions.

In practice, this means that official cautions, clean-up notices and penalty notices are often the preferred tools for managing non-compliances which are unintentional or opportunistic and present lesser risk to human health and the environment.

The reform of the Protection of the Environment (Operations) Waste Regulation in 2014 increased the maximum penalty the EPA can issue via penalty notices by ten-fold. This greatly increases the deterrence level by diminishing the profitability of illegal activity. In many cases issuing penalty notices represents greater public benefit than pursuing prosecutions as it delivers a prompter regulatory response, reduces pressure on the judicial system and the cost impost on Government, and is transparently reported on the EPA's public register.

A strategic approach to prosecution

Notwithstanding the EPA's exemplary prosecution results, prosecuting illegal activity is highly resource-intensive, and taking a targeted and proportional approach enables the EPA to prioritise prosecutorial resources and focus effort on individuals who are intentionally engaging in illegal activities which pose a high risk of harm to the NSW community and the environment. The EPA makes strategic decisions about which prosecutions to pursue to deliver maximum public benefit with available resources. These investigations deliver both specific and general deterrence, eliciting behavioural change across the whole waste industry.

Many factors come into play when deciding whether to bring prosecution action. These are set out in the publicly available *EPA Prosecution Guidelines*. Importantly, the evidence obtained must be sufficient to prove the alleged offence beyond reasonable doubt. This is a high bar and not all investigations result in a prosecution. Sometimes the evidence is sufficient to prove an offence has been committed but not sufficient to prove who committed the offence.

It is important that the EPA is regarded as a credible regulator. One element of that credibility is the absolute number and success rate of its prosecutions. The EPA strives for and achieves a prosecution success rate of greater than 90%.

EPA investigative officers and managers are highly skilled and committed

The EPA strongly refutes the assertions that our investigative officers and managers are underqualified, inexperienced and apathetic, and that the EPA does not have the requisite capabilities to effectively regulate the State's waste industry.

The *People Matter NSW Public Sector Employee Survey* provides an important opportunity for almost 400,000 public sector employees to provide feedback on their workplace culture and operations. Staff responses help the EPA understand how we are performing, including in comparison to other NSW public sector departments and agencies, and identify areas for improvement.

The EPA achieved a 94% response rate to the 2017 survey, and the results show that we are outstanding in the public sector. Our employees are highly engaged in our organisation and the work we do (the EPA's employee engagement score in the three surveys conducted since 2014 varies from 73% to 75% which is 8% to 10% higher than the public sector average).

a. how many illegal dumping incidents were investigated over the past five years

The EPA has an excellent compliance and enforcement track record, and is nationally recognised as a leader in environmental regulation.

Over the past five years, the EPA received and actioned 1,507 reports relating to illegal dumping. This included conducting 641 investigations into reports of major (>200 tonnes) illegal dumping incidents, as shown in the table below.

	2012–13	2013–14	2014–15	2015–16	2016–17	Total
Investigations of major illegal dumping incidents (>200 tonnes)	69	50	87	151	284	641

Illegal dumping matters are complex, and it is often not possible for EPA Authorised Officers, complainants, and our regulatory partner agencies, to gather sufficient evidence to warrant further action. For example, if a complainant is unable to provide details that could be used

to identify the alleged dumper, there is very little action the EPA or councils can take. Where we are able to identify the alleged offender, the EPA pursues the most appropriate regulatory action.

As a result of our illegal dumping investigations, in 2016–17 the EPA completed 11 waste prosecutions amounting to \$411,000 in financial penalties. The EPA also issued 78 clean up notices and 53 penalty notices associated with illegal dumping investigations during this period.

The EPA has an exceptional prosecution record. Since the EPA was re-established on 29 February 2012, it has completed over 405 prosecutions (as of 04 November 2017) with a success rate of over 95%. This has resulted in courts imposing over \$7.7 million in financial penalties.

The NSW EPA's performance significantly leads other jurisdictions. In 2016–17, we completed 103 prosecutions, resulting in over \$2.4 million in financial penalties being imposed by courts. In contrast, it has been reported that over the same period the Victorian EPA completed 11 prosecutions for \$175,000 in financial penalties.

The EPA's excellent prosecution record also extends to waste prosecutions. Since 2012, the EPA has completed nearly 70 waste-related prosecutions. This includes two Tier 1 waste prosecutions, which were taken against Mr Allan Barnes and BMG Environmental Group Pty Ltd. Around \$1.5 million in financial penalties were imposed by the courts for these offences. When appropriate the courts also made remediation orders and publication orders. The EPA is currently conducting over 30 waste investigations with a view to prosecution and has 17 waste prosecutions before the courts (as at 8 November 2017). This includes eight prosecutions of Mr Dib Hanna, for repeat waste offences.

b. qualification and training requirements for investigative officers and their managers

The EPA has highly credentialed and experienced investigative officers and managers, including experienced investigative staff who previously worked for other regulatory agencies such as the NSW Police Force and councils. Almost 65% of staff in the EPA's Waste and Resource Recovery (WaRR) branch have been with the EPA for over five years (including 24% for over 10 years), and only 16% of staff have been with the EPA for two years or less.

Our recruitment and selection processes are rigorous and comply with the requirements of the *Government Sector Employment Act 2013*. To ensure that we attract the best talent, we focus on recruiting staff with the focus capabilities required to be an effective investigator. The EPA uses the NSW Public Sector Capability Framework, developed by the NSW Public Service Commission, to create and recruit to roles, manage performance, and develop staff capability.

We seek out investigative officers and managers with the highest levels of integrity, who communicate effectively, are adept at solving problems, and have a proven track record of delivering results. Although the focus of the EPA's recruitment is on capabilities rather than qualifications, 85% of staff in our waste compliance area have a Bachelor's Degree or higher qualification (31% of our investigative officers and managers surveyed have a Master's Degree).

In addition to recruiting the best people, the EPA places great importance on staff training and development. We have an in-house Training Unit that designs, delivers and co-ordinates training for investigative officers and managers, ensuring that they have the knowledge and capabilities to be effective in their roles. This team is recognised nationally for its ability to deliver extremely high standard and effective training and is in demand from other jurisdictions to assist in the professional development of their staff.

The *EPA Training Strategy* sets out the EPA's commitment to training for all our staff. It builds upon the NSW Public Sector Capability Framework, which provides a defined

structure for training, and helps ensure that EPA employees grow and strengthen the capabilities required for their roles. In addition to training that targets the public sector capabilities, the EPA delivers training that targets a set of six occupation-specific capabilities relevant to our role as an environmental regulator in NSW. These are:

- Implement legislation, policy and procedures
- Operational/technical skills
- Environmental incident management
- Undertake inspections
- Basic investigations
- Gather and manage evidence.

The EPA Capability Assessment Tool enables investigative officers and their managers to periodically evaluate their skills against these six capabilities and identify and prioritise areas for further development through the annual *Performance Development and Feedback* planning process.

The EPA Training Unit delivers training programs designed to build the capability of investigative officers and managers. Core training which all investigative staff are expected to complete includes:

- EPA Authorised Officer
- Regulation in the EPA.

In addition, the Training Unit offers modules to develop specialist skills as required, including:

- EPA Incident Coordinator
- Introduction to Dangerous Goods for Authorised Officers
- Certificate IV in Government (Investigation)
- Diploma in Government Investigations
- Environmental Auditing
- Environmental Law Enforcement – Authorised Officers
- The Protection of the Environment Operations Act
- Investigative Interviewing & Statement Taking
- Drafting Statutory Instruments
- Undertaking Inspections
- Court Procedures & Giving Evidence
- Expert Witness
- Sampling for Investigations
- Environmental Noise
- Investigating and Preventing Illegal Dumping
- Surveillance Devices
- Checking Briefs of Evidence.

In addition to delivering internal training, our Training Unit also manages a national training program for EPA staff and other regulators through AELERT (Australasian Environmental Law Enforcement and Regulators neTwork). This includes two nationally accredited courses:

- **Certificate IV in Government (Investigation)** – designed for personnel in environmental regulatory agencies who are authorised to investigate breaches of legislation, mandated government and organisational policy

- **Diploma in Government Investigations** – designed specifically for personnel in environmental regulatory agencies who are responsible for the co-ordination, conduct and supervision of investigations into non-compliance with statutory obligations. This includes officers who supervise or manage staff conducting investigations, such as team leaders, senior officers, supervisors and managers. The course provides participants with an advanced ability to analyse, plan and implement complex or technical investigations into breaches of mandatory legislation or regulation.

EPA training is highly regarded as evidenced by the fact that the United States Environmental Protection Agency has reached out to have a staff exchange program on our respective courses.

c. why there is no stand-alone investigation and enforcement unit for illegal dumping and illegal landfilling

In effect there is, but the EPA goes further than simply having a stand-alone unit. We recognise that the NSW Government and community expect that the EPA will combat illegal dumping, and have dedicated resources focussed on addressing this issue.

We mobilise the following resources to tackle illegal dumping:

- a newly established Waste Crime Taskforce, dedicated to investigating and disrupting waste crime
- a Special Investigations Unit which focuses on complex and high-profile breaches of environmental legislation, including illegal dumping
- a stand-alone Illegal Dumping Team which targets large scale illegal dumping activities
- over 60 waste compliance staff who spend a substantial proportion of their time focussed on illegal dumping investigations
- funding and oversight of Regional Illegal Dumping (RID) squads to address illegal dumping on behalf of councils.

The **Waste Crime Taskforce**, was established to focus on complex and high-profile investigations. Staffed by four skilled investigators and two waste operations specialists, with dedicated legal and intelligence support, the Taskforce also focuses on investigations that:

- involve dangerous substances such as asbestos
- are novel
- involve organised criminal behaviour.

The Taskforce will report through the EPA Chief Investigator to the Chief Environmental Regulator.

The **Specialist Investigations Unit (SIU)** is also managed by the EPA Chief Investigator. It comprises three specialist investigators and investigates serious, complex and high-profile breaches of environmental legislation administered by the EPA, including serious waste offences. SIU investigators have extensive experience in investigating these types of offences and have provided specialist expertise for many high-profile EPA investigations and prosecutions related to the illegal transport and disposal of waste.

Our **Illegal Dumping team**, comprising seven staff, is responsible for implementing the *EPA Illegal Dumping Strategy 2017–21*, including delivery of the \$65 million Illegal Dumping Program which aims to reduce illegal dumping by 30% by 2020. The program delivers a coordinated approach to illegal dumping across multiple agencies and simultaneously targets illegal activity by waste generators, transporters and dumpers.

The Illegal Dumping team also runs projects that target large scale illegal landfilling and kerbside dumping, and delivers grants to programs targeting illegal dumping such as RID

squads. Between them, the Illegal Dumping team have over 53 years of compliance and enforcement experience. The team manager has 21 years of experience in waste investigations and has been involved in over 100 complex investigations, resulting in over 40 successful prosecutions (including Tier 1 prosecutions).

While not solely dedicated to illegal dumping, the **Compliance and Enforcement** section of the EPA's Waste and Resource Recovery Branch, comprising 66 full-time equivalent staff, is responsible for investigating waste-related breaches, of which a large proportion (around 40% in 2016–17) relate to illegal landfilling and dumping.

RID Squads are dedicated teams of specialised investigative officers which investigate illegal dumping on behalf of local councils, including bushland and kerbside dumping up to 200 tonnes. To ensure an effective regional approach to combatting dumping, the squads have cross-border delegations across council areas. They are also involved in education and awareness programs and conduct joint operations with EPA and other land managers dealing with illegal dumping (including the NSW National Parks and Wildlife Service). There are currently three RID Squads (21 staff) covering 22 councils, and two RID programs (11 staff) covering an additional nine councils. The squads are primarily made up of ex-police who have strong investigation skills and are proficient in the use of surveillance approaches and devices.

d. statistics on the length of time between when a complaint is lodged and an investigation is completed (indicate whether there are KPIs pursued regarding this issue)

All waste investigations conducted by the EPA are completed within statutory timeframes.

Waste investigations are inherently difficult due to the dispersed and disaggregated nature of the activity and the sophistication of many of the players involved in unlawful waste activities. It can also be challenging to legally prove that material is waste and determine whether environmental harm has occurred due to the illegal activity. This complexity is reflected in the three-year limitation period, determined by Parliament, in which most waste prosecutions can be brought (for many other environmental offences the limitation period is one year).

The EPA has internal guidelines that provide for the timely investigation of all alleged environmental offences, including waste offences. The *EPA Guideline on Timely Investigations with a view to Prosecution* provides strict timelines for deciding which matters should be investigated with a view to prosecution so that all investigations are completed and a decision made before the limitation period expires. The EPA regularly monitors performance against these criteria and results are reported to the Executive.

The EPA always makes the decision as to whether a prosecution should proceed before the three-year limitation period expires.

Illegal dumping investigations for which court proceedings have ended since the EPA was re-established on 29 February 2012, had an average length of time of:

- 797 days (2.2 years) from when an incident came to the attention of an authorised officer, until the commencement of court proceedings
- an additional 750 days (2.1 years) from the beginning to end of court proceedings.

While this may seem like a lengthy investigation period, the level of investigation required must reflect the vigour with which these matters are defended in court. Once a prosecution is commenced for a waste offence, on average the matter is in court for two years before it is finalised, and it can be considerably longer. For example, the court took about seven and a half years to finalise a set of waste prosecutions which commenced in August 2009, (including the hearing of an appeal). In this context, it is essential that the EPA brings prosecutions that have been thoroughly investigated, with strong evidence and good

prospects of success. As noted earlier, we must consider the public interest in pursuing prosecutorial outcomes.

The length of time between when a complaint is initially lodged to when an investigation is completed is shorter for those resulting in clean-up notices and penalty notices, with most being completed in under 12 months.

e. efforts to foster a workplace culture that encourages the timely pursuit of investigations

As the state's primary environmental regulator, the EPA is a leader, partner and protector for our community and the environment. We are committed to being a world-class regulator and an exemplary organisation. We incorporate the attributes of high-performing organisations including workforce capability and diversity, employee engagement (including culture and conduct), customer focus, leadership, evidence-based decision-making (including reporting and support services), sustainable performance and innovation. Our values of integrity, trust, service, accountability, innovation and transparency, which are articulated through the *EPA Strategic Plan 2017–21*, guide how we go about our work.

The results of the *People Matter 2017 NSW Public Sector Employee Survey* indicate the positive culture and commitment of EPA staff compared to the average for the public sector:

- 82% of staff are proud of the work that they do (*Public sector average = 68%*)
- 76% say their job gives them a sense of personal accomplishment (*Public sector average = 75%*)
- 77% feel motivated to contribute more than what is normally required at work (*Public sector average = 72%*).

This strong employee engagement drives a high-performance culture:

- 73% feel they have received appropriate training and development to do their job well (*Public sector average = 62%*)
- 80% work collaboratively to achieve objectives (*Public sector average = 78%*)
- 78% continually focus on improving the work they do (*Public sector average = 72%*).

The EPA's Regulatory Practice Committee, which is chaired by the Chief Environmental Regulator, meets regularly to discuss implementation of the EPA strategic plan and compliance and enforcement activities and approaches. This includes monitoring against key performance indicators and targets related to investigation timeliness, incident response, and values and behaviours. The Chief Environmental Regulator and Executive Director of Legal Services also meet monthly with other key personnel to oversee and monitor investigations and prosecutions. We regularly assess our performance against the Modern Regulator Improvement Tool developed by AELERT and used by other environmental regulators in Australia and overseas. We have also recently created an Investigations Management Committee chaired by the Chief Environmental Regulator to specifically monitor waste investigations.

f. engagement with the NSW Police Force to pursue criminal activity (for example, what are the procedures for intelligence sharing, providing briefs of evidence and participation in other evidence gathering endeavours such as raids)

The EPA partners and collaborates with NSW Police on a wide range of fronts and our relationship is formally set out in a Memorandum of Understanding (MoU) between NSW Police and EPA/Office of Environment and Heritage (OEH). This MoU was updated in April 2017 and includes provision for exchange of information, joint operations and operational assistance. The EPA utilises the support of the NSW Police in all these areas to assist in regulating environmental issues, including investigating serious crime.

Information

NSW Police holds a range of information on people, vehicles and locations of interest which the EPA can access via the NSW Police 'iASK system' in accordance with the terms of the MoU. This information includes firearms information, criminal history checks and any relevant NSW Police warnings in terms of people, vehicles or locations. Access to this information provides an opportunity for EPA to be intelligence-focused, which assists with our regulatory activities and enables us to take precautions regarding the safety of our operations officers. Access to iASK information is coordinated and administered by the EPA Intelligence and Analysis Unit and information is available to officers who require the information for work purposes.

Operations

The EPA regularly requests assistance from NSW Police in executing search warrants and preventing breaches of the peace if required. EPA and NSW Police also regularly collaborate on joint operations including those on motor vehicles, dangerous goods transportation and waste compliance.

Case Study: Operation DARLARC

On 25 October 2017, the EPA with the support of the NSW Police, including officers from the Redfern Local Command and Tactical Response Officers, executed five search warrants in Castle Hill, Guildford, Bass Hill, Merrylands West and Parramatta. This operation was the largest of its kind for the EPA.

The investigation, which included officers from the EPA's Specialist Investigations Unit and Waste Compliance team, with support from the Legal team, was into the alleged illegal dumping of waste, including waste contaminated with asbestos.

A significant amount of electronic and paper records was seized, as well as crucial evidence we believe was used in the commission of the alleged offences. The NSW Police also arrested one individual.

In 2016 the EPA established its Intelligence and Analysis Unit. The Unit undertakes strategic, operational and tactical intelligence functions for operational staff and the senior management team. It also is the contact point between the NSW EPA and other NSW, interstate and federal agency intelligence areas. The Unit plays a key role in developing intelligence networks and sharing information, with a number of successes to date.

Recent examples of this collaboration include:

- joint compliance campaigns on Major Hazard Facilities with NSW SafeWork
- regular motor vehicle operations with Roads and Maritime Services and NSW Police
- joint audit campaigns on coal mines with Department of Planning and Environment and the NSW Resources Regulator
- sharing information with Australian Taxation Office.

The EPA also has a strong information sharing network with interstate environmental regulators such as EPA Victoria and Queensland Department of Environment and Heritage Protection.

We are co-regulators with local government and we support councils through funding RID Squads, competitive grants and providing training and professional development.

We are a major contributor and driver of the Australasian Environmental Law and Regulators neTwork (AELERT), which has 1,750 individual members from 214 agencies in all jurisdictions in Australia and New Zealand and several other countries. Through AELERT we share best practice regulation, connect practitioners and develop new tools and approaches. The EPA's Chief Environmental Regulator is the current Chair of AELERT. Through

AELERT the EPA is in touch with local, national and international regulators and shares information on regulatory best practice through these networks.

g) engagement with the Legal Services Division of the Office of Environment and Heritage when supporting investigations and pursuing prosecutions.

When the EPA was first created in the early 1990s, it established a talented in-house legal team, with solicitors with many years of prosecution, litigation and other relevant experience. It also established good links with specialist barristers who could be called upon for more complex matters. This enabled the EPA to gain a reputation for being a credible and successful prosecutor. When absorbed into larger environment agencies from the mid-2000s, the internal legal team took on the challenge and successfully prosecuted numerous conservation and native vegetation matters. It had successes that had not been achieved before. With the re-establishment of an independent EPA in 2012, the legal team remained with OEH but continued to have a close relationship with the EPA and its officers and continued to manage its prosecutions.

At the end of 2016 the EPA re-established its own Legal Branch with lawyers from the OEH Legal Branch, including its Executive Director and Director Litigation, both of whom have many years' experience in environmental law and prosecutions. The Executive Director of the EPA's Legal Branch now reports directly to the EPA CEO. The EPA's lawyers are skilled in prosecuting and litigating, a number having previously worked for the Director of Public Prosecutions (DPP) or major private law firms. The Director Litigation, who is the EPA's solicitor-on-the-record, has over 27 years' experience, including six years at the DPP, and has undertaken or overseen well over a thousand successful environmental prosecutions. The EPA also has access to many barristers, who are called upon to act for the EPA in complex, notable or high-profile matters. This includes a panel of highly experienced senior counsel appointed as Environmental Counsel by the Minister for the Environment, who are available to provide legal advice to the EPA and its Board.

Unlicensed operators

2. Your annual report advises that there was 99.6% compliance with environment protection licence provisions. However, the committee heard that the waste industry is rife with rogue and criminal operators who operate without a licence.
 - a. Please respond to this concern and include information on the prevalence of unlicensed operators and actions your agency is taking to close down and prosecute these operators.
 - b. Please recommend how the licensing system could be improved to provide a more level playing field in the waste industry.

Response

a. Please respond to this concern and include information on the prevalence of unlicensed operators and actions your agency is taking to close down and prosecute these operators.

A broad spectrum of waste offences creates a regulatory challenge

Waste offences are a challenging and complex regulatory issue. There is a spectrum of actions that can constitute a waste offence: escalating from littering, to kerbside dumping, to large scale dumping in a rural paddock, to operating an illegal waste facility (operating an apparently legitimate site where people are charged to dump their waste and the operator should but does not have an Environment Protection Licence).

Illegal dumping is the disposal of any waste that is larger than litter to land or water without the correct approval (environment protection licence or planning approval). It ranges from dumping small bags of rubbish or unwanted household items in cities and suburbs to larger-scale dumping of materials like construction and demolition waste in more isolated areas. This waste can include dangerous materials like asbestos. Illegal landfilling is a form of illegal dumping where waste (often from construction or demolition) is used as 'fill' without approval in roads, noise mounds, landscaping, reclamation and other works. It can damage the environment and our health, and create unsightly community spaces and high clean-up costs.

As a community, we strongly believe that illegal dumping is unacceptable. While people illegally dump waste for a range of reasons, there is no typical dumper.

We have found that large scale illegal landfilling is usually done by organised networks. It is these organised networks engaging in waste offences posing significant risk to the environment and human health that are the EPA's priority focus of regulatory activities.

There are people who choose to operate outside the law

There will always be criminal elements in any regulated sphere of society; the waste industry is not an exception. The EPA is constantly working to improve the regulatory framework, and introduce measures to drive behavioural change and strengthen the systems it has in place to regulate the industry.

Discussions about the scale of the waste problem also often refer to RIDonline data. RIDonline was established in September 2015 as a statewide illegal dumping database. It was developed to centralise illegal dumping data collection across the state and provide real time information on dumping hot spots and trends. This information will be used to track the state target of reducing illegal dumping by 30% by 2020 and inform strategic and targeted regulation. The clear majority of RIDonline matters are 'smaller scale' dumping matters (e.g. household waste dumped in gullies, mattresses on kerbsides, small amounts of construction and demolition waste left on reserves). These incidents are predominantly dealt with by local government and public land managers. This sort of dumping is a real problem but it is

generally not the sort of activity that would be considered 'unlicensed operators'. In 2015, social research conducted by the EPA found that one in three people admitted to kerbside illegal dumping¹.

The following sections outline:

- the licensing framework, including its rationale and design, and specifically what waste activities require a licence
- our risk-based approach to licence compliance monitoring
- the range of mechanisms the EPA uses to ensure that licensed operators are compliant with the Act.

Licensing framework

The EPA shares responsibility for regulating the waste industry with other regulatory authorities. One of the ways the EPA regulates higher risk activities is through licensing.

The *Protection of the Environment Operations Act 1997* (POEO Act) establishes the framework for environmental regulation of industry in NSW, including the licensing framework. The Act clearly sets out the roles of both the EPA and local governments by designating which level of government is the appropriate regulatory authority (ARA) for various activities. The EPA is the ARA for those activities that pose a more significant threat to the environment or human health.

The EPA is the ARA, and issues Environment Protection Licences (EPLs), for scheduled activities under the POEO Act where specified threshold levels are met. A risk-based approach is adopted for licensing. Schedule 1 activities are included in the POEO Act because of their potential impacts on the environment. Activities are more likely to require a licence if they are occurring at significant scales or involve substances that can harm the environment or human health. The waste industry activities that require a licence include resource recovery, waste processing, waste storage and waste disposal, transporting trackable waste, and composting. The table at **Appendix A** outlines the waste activities listed in Schedule 1, providing an example for each category, relevant annual licence fees and number of current licences.

Appendix B provides the definitions of waste activities in Schedule 1. It demonstrates licensing is a technical process. Only certain types of activity, or certain levels of activity, require a licence.

It is important to make the distinction between operators who do not require a licence because their activities fall below the licensing thresholds set out in Schedule 1 of the POEO Act, and operators who require a licence and are operating unlawfully without one (i.e. unlicensed operators).

The EPA maintains a Public Register which holds a range of publicly accessible information about licences, including a copy of the licence, all licence variations, compliance audits, pollution studies and pollution reduction programs, and summaries of any non-compliances reported in annual returns as well as penalty notices and prosecutions.

Licences impose legally binding obligations on the licensee, including volume limits, discharge limits for pollutants, monitoring and reporting conditions and special conditions to prevent pollution. For all landfill sites the EPA requires the licensee to provide the EPA with a financial assurance. This security is held by the EPA to protect against unfulfilled

¹ Illegal Dumping Research Report (July 2015) at p53. The Report can be accessed at <http://www.epa.nsw.gov.au/your-environment/litter-and-illegal-dumping/illegal-dumping-dumpers>

obligations under a licence (e.g. rehabilitating an abandoned site). For the waste industry alone, the EPA holds over \$75.2 million worth of financial assurances.

Where scheduled activities fall below the licensing thresholds set out in Schedule 1 of the POEO Act, the EPA is not the ARA and an EPL is not required. However, if illegal activity is detected the ARA (usually the local council) can still take regulatory action. Under the POEO Act, councils have equivalent powers to regulate the waste industry as the EPA.

Risk-based licensing

The EPA introduced a risk-based licensing system on 1 July 2015, which enhances the EPA's reputation for credible regulation through the transparent and collaborative assessment of environmental risk with licensees.

Under the new system, licence compliance activities are determined based on an assessment of risk, allowing the EPA to:

- better target regulatory effort towards high-risk activities
- reduce regulatory burden for lower-risk activities and good environmental performers.

The EPA has undertaken a risk assessment of all licensed premises in NSW in consultation with each licensee. The risk assessment examined:

- site-specific risks at each of the premises to identify environmental issues that the licensee must address and where the EPA needs to focus its attention
- the licensee's environmental management performance, including systems and operations they have put in place to mitigate risks and protect the environment.

Licensees with a higher risk level receive an increased level of compliance oversight, whereas licensees with a lower risk level and who perform well can benefit from reduced compliance reporting and a reduction in their licence administrative fees. Poor performing licensees pay higher licence fees, which provides an incentive to improve performance.

Environmental risk levels for each licence are published on the EPA's Public Register.

Licence compliance monitoring

The EPA uses a variety of mechanisms to monitor licence compliance, including:

- feedback and complaints from the community: the EPA maintains an Environment Line 24 hours a day, seven days a week to enable both the public and regulated businesses to alert the EPA to environmental incidents or issues
- information from EPA local and regional monitoring networks
- monitoring WaRRP reporting to ensure that all levy-liable waste facilities submit monthly reports on waste that is received and removed from the facility
- monitoring WasteLocate reporting, which tracks asbestos waste and tyres to ensure it is disposed of lawfully
- inspections, campaigns and audits.

The EPA carries out proactive monitoring to identify and regulate breaches of licence conditions.

Case study: Breach of licence conditions

In 2017, the EPA issued a Prevention Notice to BSV Tyre Recycling Australia Pty Ltd, who holds an EPL to process and store waste tyres.

The Notice was issued after the EPA inspected the premises and found:

- no operating weighbridge

-
- sediment and litter in the premises' stormwater system
 - inadequate precautions in place to address sediment run off from the premises.

The Notice required BSV to rectify water and air pollution issues and install a weighbridge at the premises. The works were carried out and the notice complied with.

A Penalty Notice for \$1,500 was also issued for failure to install a weighbridge, as this was a breach of clause 36(1) of the POEO Waste Regulation 2014.

The EPA also uses the range of information available to it to identify and regulate unlicensed operators.

Case study: Unlicensed operator

In response to a complaint, the EPA found that a waste facility operated by Crush and Haul Pty Ltd was operating unlawfully by storing and processing waste at 1953 Elizabeth Drive, Badgerys Creek without development consent or an EPL. The EPA issued:

- a clean-up notice requiring the removal of about 65,000 tonnes of waste including asbestos, which has been complied with.
 - \$37,500 in fines for operating an unlawful waste facility (for the Director and the company)
 - a cost compliance notice.
-

The EPA responds to non-compliances with the most appropriate regulatory response

Where operators are found to be in breach of licence conditions, or are operating unlawfully without the required licence, the EPA considers the most appropriate and effective regulatory response. Best practice regulation is not a 'one size fits all' approach. The EPA can take one or more of the following actions:

- issuing a clean-up or prevention notice to require breaches to be rectified
- including new or varied conditions on a licence such as a Pollution Reduction Program or a Financial Assurance
- varying the environment management category on a licence for the purposes of risk-based licencing affecting licence fees
- revoking or suspending a licence
- taking enforcement action (e.g. issue a formal warning, official caution, penalty notice or prosecution).

The appropriate level of regulatory action will depend on the facts of the case and the seriousness of the breach and is determined in accordance with *EPA Compliance Policy* and *EPA Prosecution Guidelines*.

b. Please recommend how the licensing system could be improved to provide a more level playing field in the waste industry.

The EPA is continually looking at ways to improve the waste regulatory system, in particular, we seek to make it fairer for those already doing the right thing and harder for those attempting to subvert the regulatory system.

NSW already has the toughest licensing thresholds in the country

In response to industry feedback, in 2014 the NSW Government reduced the thresholds for EPLs to what are now the toughest levels in the country. For example, in NSW a licence is required for the storage of 500 or more waste tyres, whereas the threshold in Victoria is 5,000 tyres. There is no licensing requirement in Queensland for the storage of waste tyres.

The effect of tightening the threshold for requiring an EPL is that EPA regulation captures more operators, including operators of smaller-scale waste facilities (such as waste

processing and storage). Requiring these operators to hold a licence means they must bear the costs associated with EPL compliance which they would otherwise avoid, such as:

- the installation and use of weighbridges
- site controls to manage environmental impacts of the activity such as dust, leachate, noise
- monitoring and reporting.

Facilities that are licensed believe that those operating below licensing thresholds have unfair competitive advantage, and they continue to advocate for thresholds to be reduced. Notwithstanding the above reforms in November 2014.

Licensing thresholds can be tightened further. However, this would greatly increase the number of operators 'captured' by the licensing framework. This has significant resourcing implications for both the EPA as the regulator and the businesses who would be captured and have additional compliance obligations.

Other initiatives to level the playing field

In addition to tightening the licensing thresholds, the EPA has and continues to implement other regulatory reforms to ensure the playing field is level.

In November 2014, following significant reforms to the waste regulation system, the government introduced a new Waste Regulation which included a range of initiatives to improve the market conditions for waste operators and achieve a more level playing field. These initiatives included:

- expanding the levy system (including adding the requirement to have a weighbridge at all licensed waste facilities)
- introducing stockpile limits
- introducing obligations for monitoring and reporting material flows into and out of a facility
- introducing WasteLocate reporting requirements to enable monitoring of asbestos waste and tyres
- introducing the Metropolitan Levy Area (MLA) tracking requirement for any waste generated in the MLA and transported interstate
- improving resource recovery exemptions.

The EPA is continually looking for further opportunities to improve the regulation of the NSW waste industry. For example, the EPA is currently:

- reviewing submissions from a recent consultation on proposed minimum standards for the scrap metal industry
- consulting on proposed changes to the Waste Regulation designed to set standards to ensure appropriate management, production and use of materials recovered from construction waste. Other changes proposed by the EPA relate to:
 - improving performance at landfills
 - improving the handling of asbestos waste
 - monitoring waste at licensed facilities.

Licensing conditions

3. In regard to licensing, the committee heard that there have been instances where companies have failed to meet licensing conditions and rather than enforcing the licensing requirement, your agency's response was to relax that particular condition of the licence. Please advise why this action was taken, particularly as your agency promotes taking 'strong and appropriate regulatory action'?

Transcript – 17 August 2017, pg. 24

Dr WHELAN: I can point to one in my neighbourhood. I live at Newcastle and not far from my home Port Waratah Coal Services operates the T1—the oldest coal export terminal. Part of their licence is to discharge polluted water into the Hunter.

The Hunter is an important estuary; part of it being listed under the RAMSAR Convention for internally significant wetlands. That is an important licence condition to limit the discharge of water that is full of sediment or nutrients.

My research, using the Government Information (Public Access) Act [GIPAA], showed that the company was non-compliant with their discharge limits—they were exceeding the concentration and the volume of their polluted water discharge into the Hunter by a factor of 10 or more regularly. Then their licence was reviewed.

Rather than putting in place, as you might, stricter penalties for non-compliance, an increased regulatory regime or frequent audits and inspections, those kinds of mechanisms, or withdrawing a licence until the company could demonstrate they were able to comply with it, the response was to relax that particular condition of the licence by adding a zero. The company is now largely in compliance.

Response

The EPA rejects the assertion that we have inappropriately relaxed licence conditions rather than enforcing licensing requirements. Rather than demonstrating poor regulation, we argue that this case shows a continued, responsive, and effective regulatory approach.

The EPA is required by the POEO Act to review each environment protection licence at least once every five years. In addition to this statutory review, the EPA can and does vary licences at other times to require Pollution Reduction Programs or studies, or to ensure that licence conditions reflect contemporary standards. The example of Port Waratah Coal Services (PCWS) demonstrates exactly this; the EPA has had continuous engagement with this EPL to improve outcomes.

PWCS holds EPL 601 for 'Coal Works' and 'Shipping in Bulk' activities carried out at Carrington on the Hunter River. The company has operated a coal shipping terminal at the premises since 1976. Much of the infrastructure is dated and is being progressively upgraded. The facility has had an acceptable history of environmental performance with significant progress being achieved in the last five years.

Over the past sixteen years, EPL 601 has been varied many times to include conditions to:

- ensure the protection of the environment
- reflect current best practice management
- formalise investigations and works aimed at reducing pollutant concentrations, pollutant loads and the frequency of wet weather discharges.

Recent infringements

The EPL previously had water discharge limits that specified:

- a concentration limit for total suspended solids of 50 milligrams per litre
- a volume limit of 3,000 kilolitres per day.²

These limits relate to controlled/dry weather water discharges from the settling pond system. The settling pond system (as with any other dam system) will also discharge when the design capacity of the system is exceeded. Exceedances of these limits have occurred during, and in the days following, rainfall events where the design capacity of the system has been exceeded. Because they are associated with rainfall events, these exceedances occur when the quality of the Hunter River is also impacted by catchment runoff.

The EPA issued PWCS with a Penalty Notice in 2011, and successfully prosecuted the company in Newcastle Local Court on two occasions in 2013 and 2014 for incidents relating to and causing water pollution at the terminal. Since these incidents occurred, the EPA has driven improved water management at the premises by negotiating a series of pollution studies and Pollution Reduction Programs (PRPs) with the company.

The completion of a recent pollution reduction program involving the commissioning of the controlled discharge filtration system has resulted in a significant reduction in total suspended solids concentrations from controlled discharges. New PRPs on the licence will drive further improvements.

² On 24 November 2017, the committee received correspondence from the NSW EPA that advised the previous water discharge volume limit was 500kL per day, not 3,000kL per day.

Interstate transportation of waste

4. It was suggested to the committee that to address the interstate transportation of waste the waste levy should be collected at transfer stations and recycling centres instead of at landfills. Please comment on whether this suggestion would allow the levy to work more effectively.

Response

Policy rationale and purpose of the waste levy

The NSW EPA has the most comprehensive, multifaceted and successful waste management program in Australia. We are recognised as the leading waste regulatory authority and we deliver the country's largest waste strategy, backed by strong and active compliance and enforcement. At the heart of what we do is the waste hierarchy, which places an order of preference around use of resources. The first preference is avoidance, including action to reduce the amount of waste generated by households, industry and government. The second is resource recovery, which includes re-use, recycling, reprocessing and energy recovery, which is germane to energy from waste. The third area is disposal, including management of all disposal options in the most environmentally responsible manner.

A key part of our waste strategy is the waste levy. The waste levy is a price signal that has significantly reduced waste going to landfill and has increased recycling rates in NSW in the last decade by making recycling cost competitive with disposal.

The main policy objective of the waste levy is to provide a market signal which reduces the relative cost of recycling compared to disposal (landfilling). This market signal aims to:

- drive behavioural change among waste generators, including households, businesses and developers, so that they avoid, reduce and reuse waste
- reduce the relative cost of recycling compared to disposal (landfilling). Landfilling is less expensive than recycling or resource recovery as it entails minimal handling and processing of waste. The levy accounts for the negative externalities (or market failure) of landfilling to allow recycling to compete. Where the levy is set at a level that accurately reflects the environmental and social costs, and other gate fees reflect the efficient costs of managing a landfill, the amount of waste disposed of at the landfill should be reduced to a socially optimal level
- increase the efficiency of recycling and resource recovery facilities – the more materials they recover and sell to the market, the less they pay for disposal to landfill.

The waste levy is directed to the government's consolidated revenue and used to fund essential services and infrastructure such as schools, roads and hospitals. The levy also funds significant environmental initiatives including the *Waste Less, Recycle More* program, which is managed by the EPA and is the largest program of its kind in Australia.

Transporting waste out of NSW: the issues

Despite the transportation costs, for some types of waste it is cheaper to transport waste from Sydney to Queensland rather than dispose of, or recycle, that waste in NSW.

This waste largely ends up in landfill – even if it could have been recovered and recycled – because without a waste levy, Queensland cannot support a strong recycling and recovery sector.

The unnecessary long-haul transport of waste via road and/or rail also raises environmental and human health impacts including:

- increased risk of vehicle accidents
- increased wear and tear on the state's road and rail infrastructure
- increased risk of spills, contamination and leakage
- biosecurity concerns, including the risk of transport of fire ants from infested areas
- emissions of pollutants
- unnecessary human exposure to asbestos and other contaminants.

For these reasons, the European Union's Waste Framework Directive (2008, Article 16) determines that waste must be disposed of as close as possible to its place of generation (the 'proximity principle'). The proximity principle requires communities to take responsibility for managing the waste that they generate. This includes internalising associated environmental, social and economic costs and impacts.

State-based solutions have proven challenging to enforce

State-based solutions risk offending the Australian Constitution

Based on EPA's prior experience, there are potential constitutional issues with charging the levy at transfer stations and recycling facilities.

However, the EPA is committed to identifying a workable solution to this issue and is open to considering any proposals that seek to address the unnecessary long-haul transport of waste.

Over recent years, the EPA has sought legal advice on a range of possible state-based solutions to the unnecessary long-haul transport of waste to Queensland. This included detailed policy options which sought to restrict or disincentivise the interstate movement of waste or change the point along the waste supply chain where the levy is paid. These proposals have considered feedback from various industry stakeholders.

The EPA considers that each of the options run the risk of offending the Australian Constitution.

Specifically:

- Section 90 of the Australian Constitution requires that there be no tax on production:

Exclusive power over customs, excise, and bounties

On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

- Section 92 of the Australian Constitution requires that trade and commerce between the States must be absolutely free:

Trade within the Commonwealth to be free

On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Proximity Principle

The proximity principle clearly demonstrates the constitutional issues associated with attempting to implement a state-based solution.

The NSW Government introduced the proximity principle in 2014, making it an offence to transport waste by motor vehicle for disposal more than 150 kilometres from where it was generated.

However, two key issues arose:

1. Agile waste facilities and transporters quickly adapted and began to transport large volumes of waste long distances by rail (instead of road) to evade the proximity principle. Several intermodal facilities have even begun storing waste solely for further rail transport.
2. The proximity principle was challenged on the basis that it offended section 92 of the Australian Constitution.

The EPA formed the view that there were significant constitutional issues with enforcing the proximity principle and settled the legal challenge.

The proximity principle will be repealed upon commencement of the current proposed reform to the Waste Regulation 2014. New tools are needed to address the continued unnecessary long-distance transport of waste.

A national solution is the most prospective solution

The EPA is of the view that, given the restrictions imposed by the Australian Constitution, it is highly unlikely that a State-based regulatory solution that substantially addresses the adverse impacts of the long-distance transport of waste is the appropriate response. Rather, the development of an effective national solution is critical for resolving this issue.

That said however, the introduction of a meaningful waste levy in Queensland would see the immediate cessation of most waste travelling from NSW to Queensland.

The NSW EPA has been involved in developing a national solution through the Heads of EPA (HEPA) forum. HEPA is an informal collegiate forum for the heads of environment protection regulators to pursue their commitment to a best practice and coherent regulatory environment in Australia and New Zealand, including for waste.

While NSW continues to drive for a national solution, the EPA will continue trying to interrupt the business models that make the unnecessary long-distance transport of waste commercially attractive through regulatory reform and targeted compliance campaigns.

Appendix A – Summary of Waste Licences administered by EPA

Activity	Examples	Annual licence fee range in FY2017-2018 ³	Number of current licences ⁴
Resource recovery	Recycling and processing of waste where greater than 50% of the waste becomes a product.	\$1,500 - \$8,125	90
Disposing waste by applying it to land	Landfill; using capped and treated waste to contour the land on a golf course	\$4,000	135
Disposal of waste	Disposal of waste through thermal treatment	\$8,125	2
Waste processing but not thermal treatment	Recycling and processing of waste where less than 50% of the waste becomes a product and the majority (more than 50%) is a residual waste.	\$1,500 - \$8,125	75
Waste storage	Storage facilities where wastes may be aggregated for further treatment or processing; transfer stations	\$1,500 - \$4,000	90
Mobile waste processing	Mobile plant which moves from site to site to process waste over a short timeframe	\$4,000	9
Composting	Processing of organic wastes into compost products	\$625 - \$6,250	36
Container reconditioning	Reconditioning containers used to transport dangerous goods	\$6,250	3
Transporting trackable waste	Transporting of trackable wastes	\$500	590
Total POEO Act waste activity licences			1030

³ Schedule 1 of the Protection of the Environment Operations (General) Regulation 2009

⁴ Numbers are result of PALMS search of issued licences for each activity; where the activity is the primary fee based activity listed. There are other licences that have waste activities included in the activities occurring on the premises, but for those licences the primary fee based activity is not a fee based activity.

Appendix B: Schedule 1 – POEO Act – Waste activities

Part 1 – Premises based activities

34 Resource recovery

(1) This clause applies to the following activities:

recovery of general waste, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing, otherwise than for the recovery of energy.

recovery of hazardous and other waste, meaning the receiving of hazardous waste, restricted solid waste or special waste (other than asbestos waste or waste tyres) from off site and its processing, otherwise than for the recovery of energy.

recovery of waste oil, meaning the receiving of waste oil from off site and its processing, otherwise than for the recovery of energy.

recovery of waste tyres, meaning the receiving of waste tyres from off site and their processing, otherwise than for the recovery of energy.

(2) However, this clause does not apply to the recovery of stormwater or the processing of any of the following:

- (a) contaminated soil,
- (b) contaminated groundwater,
- (c) sewage within a sewage treatment system (whether or not that system is licensed).

(2A) This clause also does not apply to the receiving of waste at premises from off site and its processing if:

- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the waste at the premises other than blending, mixing, packaging or storage of the waste for the purpose of that sale or supply, and
- (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014) at the time it is received, and
- (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
- (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the Protection of the Environment Operations (Waste) Regulation 2014.

(3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:

- (a) it meets the criteria set out in Column 2 of that Table, and
- (b) either:
 - (i) less than 50% by weight of the waste received in any year requires disposal after processing, or
 - (ii) an exemption granted under Part 9 of the Protection of the Environment Operations (Waste) Regulation 2014 exempts the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (application to land), waste disposal (thermal treatment), waste processing (non-thermal treatment) and waste storage.

Table

Activity	Criteria
recovery of general waste	<p>if the premises are in the regulated area:</p> <ul style="list-style-type: none">(a) involves having on site at any time more than 1,000 tonnes or 1,000 cubic metres of waste, or(b) involves processing more than 6,000 tonnes of waste per year <p>if the premises are outside the regulated area:</p> <ul style="list-style-type: none">(a) involves having on site at any time more than 2,500 tonnes or 2,500 cubic metres of waste, or(b) involves processing more than 12,000 tonnes of waste per year
recovery of hazardous and other waste	involves having on site at any time more than 200 kilograms of waste
recovery of waste oil	involves processing more than 20 tonnes of waste oil per year or having on site at any time more than 2,000 litres of waste oil
recovery of waste tyres	<p>involves having on site at any time (other than in or on a vehicle used to transport the tyres to or from the premises) more than 5 tonnes of waste tyres or 500 waste tyres, or</p> <p>involves processing more than 5,000 tonnes of waste tyres per year</p>

39 Waste disposal (application to land)

- (1) This clause applies to waste disposal by application to land, meaning the application to land of waste received from off site, including (but not limited to) application by any of the following methods:
- (a) spraying, spreading or depositing on the land,
 - (b) ploughing, injecting or mixing into the land,
 - (c) filling, raising, reclaiming or contouring the land.
- (2) However, this clause does not apply to an activity that involves any of the following:
- (a) sites inside the regulated area that, over any period of time, receive from off site a total of no more than 200 tonnes of the following waste (and no other waste):
 - (i) building and demolition waste only,
 - (ii) building and demolition waste mixed with virgin excavated natural material,
 - (b) sites outside the regulated area that, over any period of time, receive from off site a total of no more than 200 tonnes of the following waste (and no other waste):
 - (i) building and demolition waste only,
 - (ii) building and demolition waste mixed with virgin excavated natural material, being waste generated inside the regulated area,
 - (c) sites outside the regulated area that, over any period of time, receive from off site a total of no more than 20,000 tonnes of the following waste (and no other waste):
 - (i) building and demolition waste only,

- (ii) building and demolition waste mixed with virgin excavated natural material, being waste generated outside the regulated area,
- (d) sites that receive from off site no more than 5 tonnes of waste tyres per year or 500 waste tyres in total over any period (and no other waste),
- (e) sites where only virgin excavated natural material is received from off site and applied to land,
- (f) sites that are outside the regulated area, but only if:
 - (i) the site is owned by and operated by or on behalf of a local council, and
 - (ii) the site was in existence immediately before 28 April 2008 and was not required to be licensed before that date, and
 - (iii) details required under clause 47 of the Protection of the Environment Operations (Waste) Regulation 2005 were provided, in relation to the site, before 28 April 2008, and
 - (iv) the site receives from off site less than 5,000 tonnes per year of waste, and
 - (v) that waste has been generated outside the regulated area and consists only of general solid waste (putrescible), general solid waste (non-putrescible), clinical and related waste, asbestos waste, grease trap waste or waste tyres (or any combination of them).
- (3) The activity to which this clause applies is declared to be a scheduled activity.
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

40 Waste disposal (thermal treatment)

- (1) This clause applies to the following activities:

thermal treatment of general waste, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing by thermal treatment.

thermal treatment of hazardous and other waste, meaning the receiving of hazardous waste, restricted solid waste, liquid waste or special waste from off site and its processing by thermal treatment.

- (2) However, this clause does not apply to the treatment of any of the following:
- (a) contaminated soil,
 - (b) contaminated groundwater,
 - (c) sewage within a sewage treatment system (whether or not that system is licensed).
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

Table

Activity	Criteria
thermal treatment of general waste	involves processing more than 200 tonnes of waste per year
thermal treatment of hazardous and other waste	involves having on site at any time more than 200 kilograms of waste (other than clinical and related waste), or involves having on site at any time any quantity of clinical and related waste

41 Waste processing (non-thermal treatment)

(1) This clause applies to the following activities:

non-thermal treatment of general waste, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing otherwise than by thermal treatment.

non-thermal treatment of hazardous and other waste, meaning the receiving of hazardous waste, restricted solid waste or special waste (other than asbestos waste or waste tyres) from off site and its processing otherwise than by thermal treatment.

non-thermal treatment of liquid waste, meaning the receiving of liquid waste (other than waste oil) from off site and its processing otherwise than by thermal treatment.

non-thermal treatment of waste oil, meaning the receiving of waste oil from off site and its processing otherwise than by thermal treatment.

non-thermal treatment of waste tyres, meaning the receiving of waste tyres from off site and their processing otherwise than by thermal treatment.

(2) However this clause does not apply to the processing of any of the following:

- (a) stormwater,
- (b) contaminated soil,
- (c) contaminated groundwater,
- (d) sewage within a sewage treatment system (whether or not that system is licensed).

(2AA) This clause also does not apply to the receiving of waste at premises from off site and its processing if:

- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the waste at the premises other than blending, mixing, packaging or storage of the waste for the purpose of that sale or supply, and
- (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014) at the time it is received, and
- (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
- (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the Protection of the Environment Operations (Waste) Regulation 2014.

(2A) The activity of non-thermal treatment of liquid waste is declared to be a scheduled activity if it meets the criteria for that activity set out in Column 2 of the Table to this clause.

(3) Each other activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:

- (a) it meets the criteria set out in Column 2 of that Table, and
- (b) 50% or more by weight of the total amount of waste received per year requires disposal after processing.

(4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

Table

Activity

Criteria

non-thermal treatment of general waste	<p>if the premises are in the regulated area:</p> <p>(a) involves having on site at any time more than 1,000 tonnes or 1,000 cubic metres of waste, or</p> <p>(b) involves processing more than 6,000 tonnes of waste per year</p> <p>if the premises are outside the regulated area:</p> <p>(a) involves having on site at any time more than 2,500 tonnes or 2,500 cubic metres of waste, or</p> <p>(b) involves processing more than 12,000 tonnes of waste per year</p>
non-thermal treatment of hazardous and other waste	<p>involves having on site at any time more than 200 kilograms of waste (other than clinical and related waste), or</p> <p>involves having on site at any time any quantity of clinical and related waste</p>
non-thermal treatment of liquid waste	<p>involves having on site at any time more than 200 kilograms of liquid waste (other than clinical and related waste), or</p> <p>involves having on site at any time any quantity of liquid waste that is clinical and related waste</p>
non-thermal treatment of waste oil	<p>involves having on site at any time more than 2,000 litres of waste oil, or</p> <p>involves processing more than 20 tonnes of waste oil per year</p>
non-thermal treatment of waste tyres	<p>involves having on site at any time (other than in or on a vehicle used to transport the tyres to or from the premises) more than 5 tonnes of waste tyres or 500 waste tyres, or</p> <p>involves processing more than 5,000 tonnes of waste tyres per year</p>

42 Waste storage

- (1) This clause applies to waste storage, meaning the receiving from off site and storing (including storage for transfer) of waste.
- (2) However, this clause does not apply to any of the following:
- (a) the storage of stormwater,
 - (b) the storage of up to 60 tonnes at any time of any of the following kinds of waste (but not when accompanied by any other kind of waste):
 - (i) drilling mud,
 - (ii) grease trap waste,
 - (iii) waste lead acid batteries,
 - (iv) waste oil,
 - (c) the storage of sewage within a sewage treatment system,
 - (d) the storage and transfer of liquid waste that is generated and treated on site prior to sewer discharge, or lawful discharge to waters.
- (2A) This clause also does not apply to the receiving of waste from off site and its storage if:
- (a) the waste is to be sold or supplied from those premises as landscaping material (that is, as lawful soil amendments or for landscape gardening) and nothing else occurs in respect of the

waste at the premises other than storage of the waste for the purpose of that sale or supply, and

- (b) the waste is virgin excavated natural material or meets all of the conditions of a resource recovery order (made under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014) at the time it is received, and
- (c) the waste does not include any liquid waste or biosolids that are not general solid waste (non-putrescible), and
- (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the Protection of the Environment Operations (Waste) Regulation 2014.

(2B) This clause also does not apply to the receiving of virgin excavated natural material from off site and its storage if the only waste received is virgin excavated natural material.

(3) The activity to which this clause applies is declared to be a scheduled activity if:

- (a) more than 5 tonnes of hazardous waste, restricted solid waste, liquid waste or special waste (other than waste tyres) is stored on the premises at any time, or
- (b) more than 5 tonnes of waste tyres or 500 waste tyres is stored on the premises at any time (other than in or on a vehicle used to transport the tyres to or from the premises), or
- (c) more than the following amounts of waste (other than waste referred to in paragraph (a) or (b)) are stored on the premises at any time:
 - (i) in the case of premises in the regulated area—more than 1,000 tonnes or 1,000 cubic metres,
 - (ii) in the case of premises outside the regulated area—more than 2,500 tonnes or 2,500 cubic metres, or
- (d) more than the following amounts of waste (other than waste referred to in paragraph (a) or (b)) is received per year from off site:
 - (i) in the case of premises in the regulated area—6,000 tonnes,
 - (ii) in the case of premises outside the regulated area—12,000 tonnes.

(4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

Part 2 – Activities not premises based

47 Mobile waste processing

(1) This clause applies to mobile waste processing, meaning an activity:

- (a) that involves the processing of hazardous waste, liquid waste or restricted solid waste (or any combination of them), and
- (b) that is carried out, for business or commercial purposes, by means of mobile plant.

(2) The activity to which this clause applies is declared to be a scheduled activity.

48 Transportation of trackable waste

(1) This clause applies to the following activities:

- (a) **transportation of category 1 trackable waste**, meaning the transportation of category 1 trackable waste within New South Wales,

Note. This activity covers any transportation of category 1 trackable waste within New South Wales, whether or not the transportation of the waste is confined to New South Wales.

- (b) **transportation of category 2 trackable waste**, meaning the transportation of category 2 trackable waste from New South Wales to a participating State, into New South Wales from a

participating State or through New South Wales from one participating State to another.

- (2) However, this clause does not apply to the transportation of waste that is excluded from the application of Part 4 of the Protection of the Environment Operations (Waste) Regulation 2014 (the Waste Regulation) by clause 41 of that Regulation.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.
- (4) In this clause:

category 1 trackable waste and category 2 trackable waste have the same meanings as in the Waste Regulation.

participating State has the same meaning as in Part 4 of the Waste Regulation.

Table

Activity	Criteria
transportation of category 1 trackable waste	involves the transportation of more than 200 kilograms of category 1 trackable waste in any load
transportation of category 2 trackable waste (other than tyres)	involves the transportation of more than 200 kilograms of category 2 trackable waste in any load

Part 3 Definitions

Division 1 Waste classifications

49 Definitions of waste classifications

- (1) In this Schedule:

general solid waste (non-putrescible) means waste (other than special waste, hazardous waste, restricted solid waste, general solid waste (putrescible) or liquid waste) that includes any of the following:

- (a) glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal,
- (b) paper or cardboard,
- (c) household waste from municipal clean-up that does not contain food waste,
- (d) waste collected by or on behalf of local councils from street sweeping,
- (e) grit, sediment, litter and gross pollutants collected in, and removed from, stormwater treatment devices or stormwater management systems, that has been dewatered so that it does not contain free liquids,
- (f) grit and screenings from potable water and water reticulation plants that has been dewatered so that it does not contain free liquids,
- (g) garden waste,
- (h) wood waste,
- (i) waste contaminated with lead (including lead paint waste) from residential premises or educational or child care institutions,
- (j) containers, having previously contained dangerous goods, from which residues have been removed by washing or vacuuming,
- (k) drained oil filters (mechanically crushed), rags and oil absorbent materials that only contain non-volatile petroleum hydrocarbons and do not contain free liquids,
- (l) drained motor oil containers that do not contain free liquids,
- (m) non-putrescible vegetative waste from agriculture, silviculture or horticulture,
- (n) building cavity dust waste removed from residential premises, or educational or child care

- institutions, being waste that is packaged securely to prevent dust emissions and direct contact,
- (o) synthetic fibre waste (from materials such as fibreglass, polyesters and other plastics) being waste that is packaged securely to prevent dust emissions, but excluding asbestos waste,
 - (p) virgin excavated natural material,
 - (q) building and demolition waste,
 - (r) asphalt waste (including asphalt resulting from road construction and waterproofing works),
 - (s) biosolids categorised as unrestricted use, or as restricted use 1, 2 or 3, in accordance with the criteria set out in the Biosolids Guidelines,
 - (t) cured concrete waste from a batch plant,
 - (u) fully cured and set thermosetting polymers and fibre reinforcing resins,
 - (v) fully cured and dried residues of resins, glues, paints, coatings and inks,
 - (w) anything that is classified as general solid waste (non-putrescible) pursuant to an EPA Gazettal notice,
 - (x) anything that is classified as general solid waste (non-putrescible) pursuant to the Waste Classification Guidelines,
 - (y) any mixture of anything referred to in paragraphs (a)–(x).

general solid waste (putrescible) means waste (other than special waste, hazardous waste, restricted solid waste or liquid waste) that includes any of the following:

- (a) household waste containing putrescible organics,
- (b) waste from litter bins collected by or on behalf of local councils,
- (c) manure and nightsoil,
- (d) disposable nappies, incontinence pads or sanitary napkins,
- (e) food waste,
- (f) animal waste,
- (g) grit or screenings from sewage treatment systems that have been dewatered so that the grit or screenings do not contain free liquids,
- (h) anything that is classified as general solid waste (putrescible) pursuant to an EPA Gazettal notice,
- (i) anything that is classified as general solid waste (putrescible) pursuant to the Waste Classification Guidelines,
- (j) a mixture of anything referred to in paragraphs (a)–(i).

hazardous waste means waste (other than special waste or liquid waste) that includes any of the following:

- (a) anything that is classified as:
 - (i) a substance of Class 1, 2, 5 or 8 within the meaning of the Transport of Dangerous Goods Code, or
 - (ii) a substance to which Division 4.1, 4.2, 4.3 or 6.1 of the Transport of Dangerous Goods Code applies,
- (b) containers, having previously contained:
 - (i) a substance of Class 1, 3, 4, 5 or 8 within the meaning of the Transport of Dangerous Goods Code, or
 - (ii) a substance to which Division 6.1 of the Transport of Dangerous Goods Code applies, from which residues have not been removed by washing or vacuuming,
- (c) coal tar or coal tar pitch waste (being the tarry residue from the heating, processing or

- burning of coal or coke) comprising more than 1% (by weight) of coal tar or coal tar pitch waste,
- (d) lead-acid or nickel-cadmium batteries (being waste generated or separately collected by activities carried out for business, commercial or community services purposes),
 - (e) lead paint waste arising otherwise than from residential premises or educational or child care institutions,
 - (f) anything that is classified as hazardous waste pursuant to an EPA Gazettal notice,
 - (g) anything that is classified as hazardous waste pursuant to the Waste Classification Guidelines,
 - (h) a mixture of anything referred to in paragraphs (a)–(g).

liquid waste means any waste (other than special waste) that includes any of the following:

- (a) anything that:
 - (i) has an angle of repose of less than 5 degrees above horizontal, or
 - (ii) becomes free-flowing at or below 60°C or when it is transported, or
 - (iii) is generally not capable of being picked up by a spade or shovel,
- (b) anything that is classified as liquid waste pursuant to an EPA Gazettal notice.

restricted solid waste means any waste (other than special waste, hazardous waste or liquid waste) that includes any of the following:

- (a) anything that is classified as restricted solid waste pursuant to the Waste Classification Guidelines,
- (b) anything that is classified as restricted solid waste pursuant to an EPA Gazettal notice.

special waste means any of the following:

- (a) clinical and related waste,
- (b) asbestos waste,
- (c) waste tyres,
- (d) anything that is classified as special waste pursuant to an EPA Gazettal notice.

(2) Despite subclause (1), in this Schedule, any waste that is classified as one of the following classes of waste, in accordance with an immobilised contaminants approval granted under Part 10 of the Protection of the Environment Operations (Waste) Regulation 2014, is taken to be waste of that class:

- (a) general solid waste (non-putrescible),
- (b) general solid waste (putrescible),
- (c) hazardous waste,
- (d) restricted solid waste,
- (e) special waste.

Division 2 Other definitions

50 Other definitions

(1) In this Schedule:

animal waste includes dead animals and animal parts and any mixture of dead animals and animal parts.

asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

asbestos waste means any waste that contains asbestos.

Australian Explosives Code means the document entitled Australian Code for the Transport of Explosives by Road and Rail, published by the Commonwealth Department of Infrastructure,

Transport, Regional Development and Local Government and as in force from time to time.

biosolids means the organic product that results from sewage treatment processes (sometimes referred to as sewage sludge).

Biosolids Guidelines means the document entitled Environmental Guidelines: Use and Disposal of Biosolids Products, published by the EPA and as in force from time to time, copies of which are held in the offices of the EPA.

Note. A copy of the guidelines is available on the EPA's website (www.epa.nsw.gov.au).

building and demolition waste means unsegregated material (other than material containing asbestos waste or liquid waste) that results from:

(a) the demolition, erection, construction, refurbishment or alteration of buildings other than:

- (i) chemical works, or
- (ii) mineral processing works, or
- (iii) container reconditioning works, or
- (iv) waste treatment facilities, or

(b) the construction, replacement, repair or alteration of infrastructure development such as roads, tunnels, sewage, water, electricity, telecommunications and airports,

and includes materials such as:

(c) bricks, concrete, paper, plastics, glass and metal, and

(d) timber, including unsegregated timber, that may contain timber treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP),

but does not include excavated soil (for example, soil excavated to level off a site prior to construction or to enable foundations to be laid or infrastructure to be constructed).

clinical and related waste means:

- (a) clinical waste, or
- (b) cytotoxic waste, or
- (c) pharmaceutical, drug or medicine waste, or
- (d) sharps waste.

clinical waste means any waste resulting from medical, nursing, dental, pharmaceutical, skin penetration or other related clinical activity, being waste that has the potential to cause injury, infection or offence, and includes waste containing any of the following:

- (a) human tissue (other than hair, teeth and nails),
- (b) bulk body fluids or blood,
- (c) visibly blood-stained body fluids, materials or equipment,
- (d) laboratory specimens or cultures,
- (e) animal tissue, carcasses or other waste from animals used for medical research,

but does not include any such waste that has been treated by a method approved in writing by the Director-General of the Department of Health.

coal includes any other carbonaceous material.

coal seam gas means petroleum that:

- (a) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane, and
- (b) is in a gaseous state at standard temperature and pressure, and
- (c) is extracted from coal beds.

contaminated soil means soil that contains a substance at a concentration above the concentration at which the substance is normally present in soil from the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, where harm to the environment includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

cytotoxic waste means any substance contaminated with any residues or preparations that contain materials that are toxic to cells principally through their action on cell reproduction.

dangerous goods has the same meaning as it has in the Transport of Dangerous Goods Code.

effluent means:

- (a) waste water from sewage collection or treatment plants, or
- (b) waste water from collection or treatment systems that are ancillary to processing industries involving livestock, agriculture, wood, paper or food, being waste water that is conveyed from the place of generation by means of a pipe, canal or conventional method used in irrigation (but not by means of a tanker or truck), or
- (c) waste water from collection or treatment systems that are ancillary to intensive livestock, aquaculture or mariculture, being waste water that is released by means of a pipe, canal or other conventional method used in irrigation as part of day to day farming operations.

electricity plant includes all associated water storage, ash recovery and waste management facilities.

EPA Gazettal notice means a notice that has been published in the Gazette by the EPA, copies of which are held in the offices of the EPA.

Note. A copy of each EPA Gazettal notice is available on the EPA's website (www.epa.nsw.gov.au).

excluded material means contaminated soil, grease trap waste, waste stored prior to its lawful discharge to a sewer or waters, septic tank waste, stormwater or recoverable oil or oil and water mixture.

explosives has the same meaning as it has in the Australian Explosives Code.

food waste means waste from the manufacture, preparation, sale or consumption of food but does not include grease trap waste.

garden waste means waste that consists of branches, grass, leaves, plants, loppings, tree trunks, tree stumps and similar materials, and includes any mixture of those materials.

grease trap waste means any grease, oil, solids, water or other matter:

- (a) that results from the preparation or manufacturing of food, and
- (b) that is collected in a grease trap in the usual course of the operation of the grease trap.

manure includes any mixture of manure and biodegradable animal bedding (such as straw).

metropolitan area means the area of Sydney, Newcastle, Central Coast and Wollongong bounded by and including the local government areas of Newcastle, Lake Macquarie, Wyong, Gosford, Hawkesbury, Blue Mountains, Penrith, Liverpool, Camden, Campbelltown, Wollongong and Shellharbour.

mobile plant means any equipment or machinery that:

- (a) is capable of carrying on any one or more of the activities referred to in Part 1 of this Schedule, and
- (b) is capable of moving under its own motive power or being transported, and
- (c) is operated at a particular site on a temporary basis only (that is, for a total period of not more than 6 months in any 12-month period),

but does not include rolling stock.

natural organic fibrous materials means bagasse, peat, seed hulls and husks, straw and the like, and includes any mixture of those materials.

on site—see subclause (2).

organics means natural organic fibrous materials of waste and non-waste origin, including:

- (a) putrescible organics (such as meat, fish, poultry, fruit, vegetable and their cooked or processed products, biosolids and animal materials), and
- (b) non-putrescible organics (such as timber, garden trimmings, agricultural, forestry and crop materials, and natural fibrous organic and vegetative materials),

but does not include:

- (c) human-made organic chemicals (such as solvents, industrial, agricultural, mining, household chemical cleaning agents and personal care products), or
- (d) naturally occurring organic chemicals that have been refined and concentrated by human activity (such as oil, petrol, diesel and coal tar).

pharmaceutical, drug or medicine waste means waste:

- (a) that has been generated by activities carried out for business or commercial purposes, and
- (b) that consists of pharmaceutical or other chemical substances specified in the Poisons List made under section 8 of the Poisons and Therapeutic Goods Act 1966.

regulated area means the area comprising the local government areas of Ashfield, City of Auburn, Ballina, Bankstown City, Bellingen, Blacktown City, Blue Mountains City, Botany Bay City, Burwood, Byron, Camden, Campbelltown City, Canada Bay, Canterbury City, Cessnock City, Clarence Valley, Coffs Harbour City, Dungog, Fairfield City, Gloucester, Gosford City, Great Lakes, Greater Taree City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, Kempsey, Kiama, City of Kogarah, Ku-ring-gai, Kyogle, Lake Macquarie City, Lane Cove, Leichhardt, Lismore City, Liverpool City, Maitland City, Manly, Marrickville, Mosman, Muswellbrook, Nambucca, Newcastle City, North Sydney, Parramatta City, Penrith City, Pittwater, Port Macquarie-Hastings, Port Stephens, Randwick City, Richmond Valley, Rockdale City, Ryde City, Shellharbour City, Shoalhaven City, Singleton, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Tweed, Upper Hunter Shire, Warringah, Waverley, Willoughby City, Wingecarribee, Wollondilly, Wollongong City, Woollahra and Wyong.

rolling stock means:

- (a) railway vehicles used or intended to be used to transport passengers or freight for reward, or
- (b) railway vehicles used or intended to be used to maintain railway track and equipment (whether or not for reward),

but does not include railway vehicles that are used solely for heritage purposes.

sharps means those things:

- (a) that have sharp points or edges capable of cutting, piercing or penetrating the skin (such as needles, syringes with needles or surgical instruments), and
- (b) that are designed for the purpose of cutting, piercing or penetrating the skin, and
- (c) that have the potential to cause injury or infection.

sharps waste means any waste collected from designated sharps waste containers used in the course of business, commercial or community service activities, being waste resulting from the use of sharps for any of the following purposes:

- (a) human health care by health professionals and other health care providers,
- (b) medical research or work on cadavers,
- (c) veterinary care or veterinary research,
- (d) skin penetration or the injection of drugs or other substances for medical or non-medical reasons,

but does not include waste that has been treated on the site where it was generated (and to a standard specified in an EPA Gazettal notice) or waste that has been treated by a method approved in writing by the Secretary of the Ministry of Health.

thermal treatment means the processing of wastes by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal treatment processes.

toxic substance has the same meaning as it has in the Transport of Dangerous Goods Code.

Transport of Dangerous Goods Code means the document called the Australian Code for the Transport of Dangerous Goods by Road and Rail (7th edition) approved by the Ministerial Council for Road Transport and published by the Commonwealth Government from time to time.

virgin excavated natural material means natural material (such as clay, gravel, sand, soil or rock fines):

(a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities, and

(b) that does not contain any sulfidic ores or soils or any other waste,

and includes excavated natural material that meets such criteria for virgin excavated natural material as may be approved for the time being pursuant to an EPA Gazettal notice.

Waste Classification Guidelines means the document entitled Waste Classification Guidelines, published by the EPA and as in force from time to time, copies of which are held in the offices of the EPA.

Note. A copy of the guidelines is available on the EPA's website (www.epa.nsw.gov.au).

waste tyres means used, rejected or unwanted tyres, including casings, seconds, shredded tyres or tyre pieces.

wood waste means sawdust, timber offcuts, wooden crates, wooden packaging, wooden pallets, wood shavings and similar materials, and includes any mixture of those materials, but does not include wood treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP).

(2) A reference to something being done in relation to waste **on site** is a reference to that thing being done only on the premises on which the waste was generated.