

Energy from Waste Parliamentary Inquiry

NSW EPA: Response to Questions on Notice (Public Hearing)

Question 1

Pg 5 - Exhumation of waste

- What is the environmental purpose [of waste exhumation]?
- Why is the levy refunded? How can it happen? Under what regulation is it happening?
- Is there a [regulatory] loophole we need to close?
- How long has it [the loophole] been in place?
- What do we need to change to close the loophole?
- How long has it [waste exhumation] been going on?
- Do you have any records of how much [waste] has been exhumed?
- How much in waste levy has been refunded [for exhumed waste]?

Response

What is the environmental purpose [of waste exhumation]?

The EPA is of the view that there are no environmental benefits associated with exhuming waste from landfill.

Under specific circumstances, there may be operational and/or safety reasons for exhuming waste from a landfill cell, including dealing with landfill cell infrastructure issues, such as failures or repairs required to landfill liners and/or landfill gas or leachate management systems.

There are clear environmental reasons to prevent exhumation of emplaced waste at landfills, as this could cause:

- damage to landfill cell infrastructure, such as gas and leachate management systems, thereby creating environmental impacts if these substances migrate off-site or into surface and groundwater bodies,
- the generation and emission of dust, carrying contaminants from the landfilled waste, that may pose a risk to human health or the environment if inhaled or migrates off-site,
- increased risk of fire in the waste mass via spontaneous combustion when oxygen is introduced via the exhumed area, and
- increased offensive odour emissions from landfills.

Exhumed waste that is sent off-site attracts a levy deduction, and depending on when the waste was originally received and landfilled, this deduction could be significantly greater than the levy amount originally paid. Transporting exhumed waste offsite also has the added benefit for the landfill operator of returning void space that can then be resold at a higher price point.

Why is the levy refunded? How can it happen?

When waste arrives at a scheduled waste disposal facility (landfill) gate it triggers requirements under Section 88 of the POEO Act to pay to the EPA a levy on every tonne of waste received. These payments are collected by the occupier of a landfill facility from the waste generator/transporter and passed on to the EPA at the end of each levy payment period (monthly).

Division 4, clause 16 of the POEO Waste Regulation allows a deduction or refund to be provided to the occupier of a landfill facility when waste leaves their site, under prescribed circumstances (e.g. lawful recovery, recycling, processing or disposal). This is generally done in the form of a levy credit within the levy system but can also be in the form of a cash rebate.

Is there a [regulatory] loophole we need to close?

The EPA agrees that regulation of the exhumation of waste can be improved, and is implementing a more consistent approach.

Where exhumation has been identified in the past as occurring inappropriately, it has been shut down using the conditions of the licence and this has been done on a case by case basis. Of the 78 levy paying landfills licensed by the EPA within the regulated area, 17 of the Environment Protection Licences (EPLs) have a 'cannot exhume' condition and 61 of the EPL's do not have this condition. This has created inconsistencies across the sites the EPA regulates.

To ensure a consistent approach to managing the adverse environmental impacts associated with exhuming waste it is necessary to address this issue through a broader regulation amendment process that captures all relevant facilities.

The EPA has proposed reforms on the matter of exhuming waste in the *Protection of the Environment Operations Legislation Amendment (Waste) Regulation 2017*. The proposal would make it an offence to exhume waste from a landfill site regardless of whether the landfill is licenced. The public consultation period on the regulatory amendment closed on 12 December 2017.

How long has it [the loophole] been in place?

The ability to exhume waste has always existed.

Where the EPA has identified cases of concern in the past, this has been managed through licensing provisions. However, the EPA are now moving towards providing greater regulatory clarity and consistency through the proposed reforms.

What do we need to change to close the loophole?

See previous responses above.

How long has it [waste exhumation] been going on?

Exhumation of waste has always occurred in specific circumstances, such as for operational reasons associated with engineering infrastructure or for research purposes, but this is usually minimal and carefully managed to ensure that adverse human health and environmental impacts are minimised.

Large-scale and poorly managed waste exhumation for other reasons (e.g. levy rorting) is a problem that the EPA is aware of at several facilities, and has to date been managed on a case-by-case basis through EPL conditions.

Do you have any records of how much [waste] has been exhumed?

Overseeing the movements of waste in and out of scheduled waste facilities through the Waste and Resource Reporting Portal (WARRP) system allows the EPA to ensure no one is transporting and claiming more than 100% of the waste that they are receiving, but there are no specific records of what quantities of waste have been exhumed.

How much in waste levy has been refunded [for exhumed waste]?

As there are no records that measure waste that has been exhumed, there is no way to determine the amount of levy that has been refunded or credited for waste that has been exhumed and transported off site.

Question 2

Pg 6 - Crush and Haul Pty Ltd

Page 15 of your submission refers to a case study involving Crush and Haul Pty Limited, which had an operation at Badgerys Creek and which was operating without a licence. I think they took about 65,000 tonnes of waste and some prosecutions were launched.

- Is the facility still operating?
- If it is operating, how is it operating? Has it been licensed?
- Did you or the DPE undertake any analysis of where that 65,000 tonnes of waste came from?
- Did any of that waste come from the WestConnex project?

Response

Crush and Haul Pty Ltd is no longer operating at the Badgerys Creek site.

The waste material stored on the site was classified to determine the regulatory provisions that applied.

No analysis was undertaken by the EPA on the origin of the material as it was not required for the regulatory action against Crush and Haul Pty Ltd. Hence, it is not known if any of the waste material originated from WestConnex.

Question 3

Pg 6 - Phoenixing

A bill was passed in 2013—I had just started in Parliament—called the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill. As far as I remember the then environment Minister was Robyn Parker. The whole premise for that bill was to stop phoenix operators and penalties for repeated waste offences.

- Do you know how many people have been prosecuted under that law?

Response

The *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill* was not intended to address “phoenixing”. The EPA has existing investigative powers to take action against the directors of companies in the event those companies are not financially viable when the EPA brings forward a prosecution.

The Bill strengthened a number of powers and created offences to tackle illegal dumping in NSW. It created offences for repeated waste offenders with jail terms up to 2 years, offences for providing false and misleading information relating to waste, and allowed the EPA to seize vehicles for repeat waste offenders.

The EPA has used these provisions to lay charges against Mr Dib Hannah for repeat waste offences, and this matter is currently before the Land and Environment Court.

In addition, three prosecutions were successfully taken against Mr Peter Darcy Endacott for knowingly providing false and misleading information about waste.