



Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014

The mulch order 2016

Introduction

This order, issued by the Environment Protection Authority (EPA) under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation), imposes the requirements that must be met by suppliers of mulch to which 'the mulch exemption 2016' applies. The requirements in this order apply to the supply of mulch for application to land as a soil amendment. Please refer to 'guidance on mulch' for further information on the requirements of this order.

1. Waste to which this order applies

- 1.1. This order applies to mulch. In this order, **mulch** means plant material shredded and/or screened to a preferred particle size grading for particular applications. Mulch, by virtue of the nature and source of the plant material, must pose minimal risk of the presence of physical and chemical contaminants.¹

Mulch may include urban wood residues and forestry and sawmill residues. Mulch does not include plant material from kerbside waste collections.

2. Persons to whom this order applies

- 2.1. The requirements in this order apply, as relevant, to any person who supplies mulch that has been generated, processed or recovered by the person.
- 2.2. This order does not apply to the supply of mulch to a consumer for land application at a premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

3. Duration

- 3.1. This order commences on 25 July 2016 and is valid until revoked by the EPA by notice published in the Government Gazette.

¹ Where there is a significant risk of the presence of physical and chemical contaminants in plant material, such as from kerbside waste collections, this waste stream must be assessed against and comply with the conditions of 'the pasteurised garden organics order 2016'.

4. Revocation

- 4.1. 'The raw mulch order 2014' which commenced on 24 November 2014 is revoked from 25 July 2016.

5. Processor requirements

The EPA imposes the following requirements on any processor who supplies mulch.

General conditions

- 5.1. On or before supplying mulch, the processor must ensure that:
 - 5.1.1. the mulch does not contain asbestos, engineered wood products, preservative treated or coated wood residues, or physical contaminants, including but not limited to glass, metal, rigid plastics, flexible plastics, or polystyrene.
 - 5.1.2. the mulch is ready for land application.
- 5.2. The processor must not supply mulch that contains any weed, disease or pest to a consumer for land application in an environmentally sensitive area.

Risk management protocol for land application

- 5.3. On or before supplying mulch, with the exception of mulch that is comprised only of urban wood residues and sawmill and forestry residues, the processor must:
 - 5.3.1. have a written risk management protocol in place. The risk management protocol must be written in accordance with clause 6.1 to 6.4.
 - 5.3.2. ensure that all relevant measures required of the processor by the risk management protocol and this order are implemented and complied with.
- 5.4. The risk management protocol must be reviewed, at a minimum, every two years to verify it is fit for purpose and to ensure continuous improvement.

Notification

- 5.5. On or before each transaction, the processor must provide the following to each consumer:
 - All relevant written measures required of the consumer by the risk management protocol and this order.

Record keeping and reporting

- 5.6. The processor must keep a written record of the following for a period of six years:
 - the risk management protocol, including all supporting documentation, required to be prepared under clause 5.3; and
 - the assessment described in clause 6.4 (including the scientific or common name and extent of any weed, disease or pest detected).
- 5.7. The processor must provide, on request, any written records required to be kept under clause 5.6 for that mulch supplied to the consumer of the mulch.
- 5.8. The processor must notify the EPA within seven days of becoming aware that it has not complied with any requirement in clause 5.1 to 5.5.

6. Risk management protocol requirements

- 6.1. The risk management protocol must contain measures that minimise the potential for the land application of mulch to cause:
 - harm to the environment; and
 - the introduction, presence, spread or increase of any weed, disease or pest.
- 6.2. The risk management protocol must include the following:
 - 6.2.1. A version, date and signature of approval.
 - 6.2.2. A scope, including a description of the activity, geographic location, the source plant material and land application site.
- 6.3. The risk management protocol must, at a minimum, consider the following and contain sufficient information to demonstrate compliance with clause 6.1:
 - 6.3.1. The location of the source plant material, such as the address and paddock or plot identification.
 - 6.3.2. The method of mulch generation and how this affects the composition of the mulch.
 - 6.3.3. The scheduling of mulch generation taking into account the potential presence of plant propagules and the seasonal growth of plant material.
 - 6.3.4. The location of the land application site, such as the address and paddock or plot identification, and its proximity to the location of the source plant material.
 - 6.3.5. The time interval between the assessment of the plant material prior to mulch generation, the mulch generation and the land application of the mulch.
 - 6.3.6. The effect of the mulch on the land application site and surrounding environment.
 - 6.3.7. Which assessment, as outlined in clause 6.4, is required for the land application site, plant material and/or mulch, and when this assessment should occur.
 - 6.3.8. The circumstances under which mulch that contains any weed, disease or pest may be supplied to a consumer for land application (other than in an environmentally sensitive area).
 - 6.3.9. Risk mitigation strategies including, but not limited to, hygiene procedures or training and education implemented by the processor.
- 6.4. The risk management protocol must require an assessment and the recording of the scientific or common name and extent of any weed, disease or pest detected according to the following requirements.
 - 6.4.1. If the land application site is not in an environmentally sensitive area:
 - before mulch generation, a person that has demonstrated competency in identifying weeds, diseases or pests significant to their enterprise must carry out a visual assessment of the source plant material to determine the presence of any weed, disease or pest; or
 - after mulch generation, a suitably qualified professional must carry out an assessment of the location where the plant material was sourced and the mulch to determine the presence of any weed,

disease or pest.

6.4.2. If the land application site is in an environmentally sensitive area:

- before mulch generation, a person that has achieved Australian Qualifications Framework Units AHCPMG301A (Control weeds), AHCPMG302A (Control plant pests, diseases and disorders), or AHCPMG303A (Identify plant specimens), or an equivalent qualification, must carry out a visual assessment of the source plant material to determine the presence of any weed, disease or pest.

7. Definitions

In this order:

application or apply to land means applying to land by:

- spraying, spreading or depositing on the land;
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

consumer means a person who applies, or intends to apply, mulch to land.

disease means anything declared by order under section 28B of the [Plant Diseases Act 1924](#) to be a disease.

engineered wood products means engineered, painted, treated or composite wood products such as particleboard, oriented strand board, plywood, laminated veneer lumber, glulam or fibreboard that are manufactured with glues, resins, water repellents, fire retardants, fungal inhibitors and/or other chemicals.

environmentally sensitive area means any of the following:

- (a) land to which [State Environmental Planning Policy No 14—Coastal Wetlands](#) or [State Environmental Planning Policy No 26—Littoral Rainforests](#) applies;
- (b) land within a wetland of international significance declared under the [Ramsar Convention on Wetlands](#) or within a World heritage area declared under the [World Heritage Convention](#);
- (c) land reserved as an aquatic reserve under the [Fisheries Management Act 1994](#) or as a marine park under the [Marine Parks Act 1997](#);
- (d) land within 100 metres of land to which paragraph (a), (b) or (c) applies;
- (e) land identified in any environmental planning instrument as being of high biodiversity significance;
- (f) land reserved under the [National Parks and Wildlife Act 1974](#) or land acquired under Part 11 of that Act;
- (g) land reserved or dedicated under the [Crown Lands Act 1989](#) for the preservation of flora, fauna or for other environmental protection purposes;
- (h) land identified as being critical habitat under the [Threatened Species Conservation Act 1995](#) or Part 7A of the [Fisheries Management Act 1994](#);
- (i) land dedicated or set apart under the [Forestry Act 2012](#) or the former Act as a flora reserve;
- (j) land (including subterranean lands) declared to be a wilderness area under the [Wilderness Act 1987](#) or the [National Parks and Wildlife Act 1974](#);
- (k) any additional areas listed as an environmentally sensitive area in a relevant Local Environmental Plan; and

- (l) agricultural land being land used for broad acre cropping, pasture, horticulture, growing fruit and keeping livestock.

forestry and sawmill residues means untreated and uncontaminated plant materials from forestry operations such as logging, silviculture and sawmilling. Forestry and sawmill residues include materials such as bark, woodchip, sawdust and wood fibre that are collected as a source separated material stream for processing.

harm to the environment means any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution, as defined in the POEO Act.

pest means anything declared by order under section 28B of the [Plant Diseases Act 1924](#) to be a pest.

preservative treated or coated wood residues means wood residues that are preservative treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP) and/or coated with substances such as varnish or paint.

processor means a person who processes, mixes, blends, or otherwise incorporates mulch into a material in its final form for supply to a consumer.

suitably qualified professional means a person with appropriate qualifications and relevant experience to possess expertise in:

- (a) determining the presence of any weed, plant disease or pest in any mulch;
- (b) making judgements about the suitability of the land application site; and
- (c) meeting the requirements of this order.

The suitably qualified professional may be a plant pathologist, ecologist or other professional depending on the assessment required.

transaction means:

- in the case of a one-off supply, the supply of a batch, truckload or stockpile of mulch that is not repeated; or
- in the case where the supplier has an arrangement with the recipient for more than one supply of mulch the first supply of mulch as required under the arrangement.

urban wood residues means untreated, unpainted, and uncontaminated urban derived timber and wood material that is collected as a separate material stream for processing. Urban wood residues include materials such as off-cuts, saw dust, wood shavings, packaging crates and pallets.

weeds means any of the following:

- (a) weeds declared to be noxious in Schedules 1 - 5 of the [Noxious Weeds \(Weed control\) Order 2014](#) under the [Noxious Weeds Act 1993](#), but only within the land to which the Noxious Weeds (Weed control) Order 2014 applies;
- (b) weeds identified under the Australian Weeds Strategy as either Weeds of National Significance or National Environmental Alert List weeds; and
- (c) any additional weeds identified in regional pest management strategies but only within the designated area.

**Manager Waste Strategy and Innovation
Environment Protection Authority
(by delegation)**

Notes

The EPA may amend or revoke this order at any time. It is the responsibility of each processor to ensure it complies with all relevant requirements of the most current order. The current version of this order will be available on www.epa.nsw.gov.au.

In gazetting or otherwise issuing this order, the EPA is not in any way endorsing the supply or use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this order are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this order nor the accompanying exemption guarantee that the environment, human health or agriculture will not be harmed.

Any person or entity which supplies mulch should assess whether the material is fit for the purpose the material is proposed to be used for, and whether this use may cause harm. The supplier may need to seek expert scientific or technical advice.

Regardless of any exemption or order provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site(s).

The transport, supply and land application of mulch remains subject to additional relevant legislation. In the POEO Act and Waste Regulation, for example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the special requirements for asbestos waste (Part 7 of the Waste Regulation), regardless of this order, is guilty of an offence and subject to prosecution. Also, the requirements of other legislation must be met including, but not limited to, the *Plant Diseases Act 1924*, *Noxious Weed Act 1993* and *Threatened Species Conservation Act 1996*.

Whilst this order requires that the mulch must not contain engineered wood products or physical contaminants including but not limited to glass, metal, rigid plastics, flexible plastics, or polystyrene, the EPA recognises that the mulch may contain extremely low and incidental amounts of engineered wood products and / or physical contaminants. The processor must implement procedures to prevent the presence of engineered wood products and physical contaminants in the mulch. These procedures must be formally documented and their implementation demonstrated. However, as noted in this order, the mulch must not contain any asbestos, or preservative treated or coated wood residues.

Source plant material to be land applied in an environmentally sensitive area must be assessed, at a minimum, by a person that has achieved Australian Qualifications Framework Units AHCPMG301A (Control weeds), AHCPMG302A (Control plant pests, diseases and disorders), or AHCPMG303A (Identify plant specimens), or an equivalent qualification. However, where possible, the EPA recommends the diagnosis and assessment of plant health be carried out by a person that has achieved AHCPMG501A (Diagnose plant health problems) or AHCPMG503A (Diagnose tree diseases), or an equivalent qualification.

Failure to comply with the conditions of this order constitutes an offence under clause 93 of the Waste Regulation.