

Coal Washery Rejects Levy

Operational Guidance Note



Department of
Environment, Climate Change and Water NSW



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Overview

This guidance note consists of a series of fact sheets that will assist in the handling of coal washery rejects, and in understanding how the NSW Government's **coal washery rejects levy** (CWR levy) applies.

The fact sheets explain what the CWR levy is, who is required to pay the CWR levy, when and how the CWR levy is paid, who is not required to pay the CWR levy, and what exemptions from the levy are available.

Under section 88 of the *Protection of the Environment Operations Act 1997* (POEO Act), occupiers of certain facilities are required to pay a contribution in respect of each tonne of waste received at the facility. The contribution required to be paid is specified in the Protection of the Environment Operations (Waste) Regulation 2005 (the POEO (Waste) Regulation).

The POEO (Waste) Regulation specifies different contributions based on waste type and location of generation or disposal. This guidance note deals with the CWR levy only.

From 1 November 2009, the CWR levy of \$15 per tonne applies to each tonne of coal washery rejects that is received from off-site and applied to land. It will be adjusted annually from 1 July 2010 according to the Consumer Price Index (CPI). Exemptions from the levy may be available in certain circumstances with approval from the Department of Environment, Climate Change and Water NSW (DECCW).

The purpose of the CWR levy is to put a price on waste disposal, thereby providing an economic incentive to find alternative uses for the material. In particular, the CWR levy is intended to discourage the emplacement of coal washery rejects where it will degrade the environment.

The CWR levy is intended to encourage generators to pursue more environmentally appropriate uses for this material.

Other waste streams have been subject to a waste levy (the 'waste and environment levy') for many years and, consequently, the community has seen steady improvements in resource recovery outcomes. The introduction of a levy on coal washery rejects disposal brings the waste management expectations of coal washery rejects in line with the expectations for other waste streams.

This guidance note includes the following fact sheets:

1. CWR levy explained
2. Paying the CWR levy
3. Obtaining an exemption from the CWR levy
4. Applying for an active mine rehabilitation exemption
5. Applying for a derelict mine rehabilitation exemption
6. Applying for a resource recovery exemption

Fact Sheet 1

CWR levy explained

POEO (Waste) Regulation

Part 2 of the POEO (Waste) Regulation establishes the framework for payment of the CWR levy. This fact sheet provides an overview of these requirements.

What are coal washery rejects?

Coal washery rejects are the waste resulting from washing coal, including substances such as coal fines, soil, sand, and rock resulting from that process.

The CWR levy does not include coal washery rejects (including chitter) that is reprocessed and used for energy generation.

What is the CWR levy?

The CWR levy is a levy that must be paid on every tonne of coal washery rejects received at a waste facility.

The CWR levy commences on 1 November 2009 at \$15 per tonne and will be adjusted each financial year in line with CPI.

Who is required to pay the CWR levy?

The CWR levy must be paid by the *occupier* of a *scheduled waste facility* located anywhere in NSW, that receives coal washery rejects from off-site and applies it to land.

The *occupier* of a facility is the person having management or control of the facility or site and, in the case of facilities licensed under the POEO Act, will be the licensee.

A *scheduled waste facility* is a facility that is required to be licensed under the POEO Act as a waste facility. Since 28 April 2008, facilities that receive and apply coal washery rejects to land are required to be licensed as a scheduled waste facility – see *waste disposal (application to land)* under cl.40 of Schedule 1 to the POEO Act.

Who is not required to pay the CWR levy?

A person is not required to pay the CWR levy in the following circumstances:

- The CWR levy only applies to coal washery rejects received at a facility from 1 November 2009 onward. Therefore, coal washery rejects received at a facility on or before 31 October 2009 is not subject to the CWR levy.
- The CWR levy only applies to coal washery rejects *received* at a site. Therefore, facilities that **only** generate and dispose of coal washery rejects on site are not subject to the CWR levy.
- The CWR levy only applies at facilities if the coal washery rejects is the only waste disposed of at that facility. If the facility receives other waste for disposal (e.g. landfills), all waste disposed of will be subject to the location-based waste and environment levy.

- The CWR levy is not payable where DECCW has granted a CWR levy exemption – see Fact Sheet 3 – *Obtaining an exemption from the CWR levy* for further detail.

Fact Sheet 2

Paying the CWR levy

Environment protection licensing

Since the reforms to environment protection licensing in April 2008, the application of coal washery rejects to land is a scheduled activity and *any* facility or site that receives coal washery rejects is required to hold an environment protection licence (EPL) authorising *waste disposal (application to land)* activities.

Facilities that already hold an EPL authorising other scheduled activities (e.g. coal mining) may have already had their licence varied in line with these licensing reforms. Where existing licences have not yet been varied, DECCW will arrange for the licence to be updated.

For example, some licensed coal mines may already have 'coal washery rejects landfilling' listed as a 'scheduled' or 'other' activity under their EPL. This category no longer exists and the licence will be updated to 'waste disposal (application to land)'. Other licensed coal mines may be silent on activities relating to coal washery rejects. If coal washery rejects is received at the premises, this will now need to be indicated on the licence.

Facilities that do not already hold an EPL are referred to the *Guide to Licensing* for more information on how to apply for an EPL. The Guide is available on DECCW's website at: www.environment.nsw.gov.au/licensing/licenceguide.htm.

Reporting and paying the levy

Licensed waste facilities that are required to pay the levy will be required to record certain information and report to DECCW.

To ensure a smooth transition, DECCW will work with individual facilities to adapt their record-keeping and reporting structures to suit the new arrangements.

Payment

The CWR levy is required to be paid 26 days after the end of each month in which CWR is received at the facility.

Payments can be made by way of cheque or electronic funds transfer.

Monthly reporting

The occupier of a facility required to pay the CWR levy are also required to submit monthly reports to DECCW for each month that coal washery rejects is received.

The monthly report must include all information necessary for DECCW to verify the quantity of coal washery rejects received at the facility and disposed, and/or transported from the site during the month to which the waste contribution monthly report (WCMR) relates.

DECCW will provide a report pro forma that can be emailed to DECCW each month.

Recording amount of coal washery rejects received

DECCW will approve calculations based upon transport units to determine the amount of coal washery rejects received at a facility. Facilities may also install a weighbridge to record the amount of coal washery rejects being received at the site.

Volumetric survey

Facilities that are required to pay the CWR levy may be required to provide DECCW with a volumetric survey prior to 1 November 2009 or prior to their commencement as a waste disposal facility, as well as subsequent, regular surveys.

Deductions from the CWR levy

Deductions can be made from the CWR levy in respect of coal washery rejects on which the levy was initially paid that is subsequently transported off the site for another lawful use or disposal elsewhere.

Deductions can only be claimed if the coal washery rejects:

- was received less than two years before the date of the proposed deduction, and
- is transported to a facility that can lawfully dispose of the material (the receiving facility will be required to pay the CWR levy).

Deductions may also be available where coal washery rejects is processed, recovered or recycled (to the extent or in the manner specified in any guidelines published or approved by DECCW) and transported from the facility for *lawful use* elsewhere. However, these deductions will only be available where the lawful use at the receiving facility can be substantiated – for example, where the receiving facility has a resource recovery exemption from waste licensing and the CWR levy, and all other necessary approvals required to receive and use the coal washery rejects.

Fact Sheet 3

Obtaining an exemption from the CWR levy

The CWR levy is intended to discourage disposal of coal washery rejects and encourage generators to pursue more environmentally appropriate uses for this material.

DECCW recognises the potential for positive environmental outcomes to be achieved where certain coal washery rejects is diverted from disposal. However, it is important to recognise that coal washery rejects will not be suitable for some land applications. Notwithstanding some beneficial characteristics, the coal washery rejects may contain contaminants that may have an adverse impact on the environment and could give rise to significant and environmental and/or future commercial liabilities.

A person considering an alternative use of coal washery rejects may apply to DECCW for an exemption from parts of the POEO Act waste regulatory framework, including the need to hold an EPL or to pay the CWR levy.

DECCW will carefully consider applications for exemption from such requirements on a case-by-case basis. If an exemption is granted it will be subject to conditions including (but not limited to) the standard of coal washery rejects used and the manner in which it may be applied to land so as to ensure that the risk of harm to the environment and human health is minimised.

An exemption from the CWR levy is not an endorsement of the material's engineering suitability, nor does it replace, in any way, planning approvals that may be required under the *Environmental Planning and Assessment Act 1979* (EP&A Act). Rather, an exemption simply enables the coal washery rejects to be applied to land without the need for waste licensing or payment of the CWR levy under the POEO Act.

The use of exempted material remains subject to other relevant environmental regulations (e.g. air and water), including pollution offences under the POEO Act relating to land (section 142A) and water (s.120).

Proponents seeking exemptions from requiring an EPL and/or from the CWR levy should also be aware that in some cases DECCW may charge the proponent a fee for service when applying for an exemption. The fee would be to cover the costs related to the administration and assessment, where appropriate, of an application for an exemption. DECCW will discuss any fee for service with the proponent prior to incurring the costs associated with this work.

Applications for coal washery rejects to be exempt from the CWR levy fall into three categories. These categories are discussed in more detail in Fact Sheet 4 – *Applying for an active mine rehabilitation exemption*, Fact Sheet 5 – *Applying for a derelict mine rehabilitation exemption* and Fact Sheet 6 – *Applying for a coal washery rejects resource recovery exemption*.

To derive the most environmentally appropriate solutions for coal washery rejects, potential uses of coal washery rejects within these categories will be considered in the order of preference outlined below:

1. active mine rehabilitation
2. derelict mine rehabilitation
3. resource recovery.

Fact Sheet 4

Applying for an active mine rehabilitation exemption

DECCW will consider exempting coal washery rejects from requiring an EPL or the CWR levy where coal washery rejects is used in the rehabilitation of active mines. Such proposed use must be demonstrated to be bona fide and deliver improved environmental outcomes for the site.

Applying for an active mine rehabilitation exemption

DECCW will consider the following broad principles when assessing a site-specific application for a proposed active mine rehabilitation exemption:

- whether the use of the coal washery rejects provides a genuine environmental benefit and is not just a means of disposal
- whether the use of the coal washery rejects is proposed in accordance with a comprehensive rehabilitation plan required as a condition of a current mining lease
- whether the proposed rehabilitation constitutes a valid use of coal washery rejects and is environmentally appropriate, having regard to the objectives of rehabilitation. This should include (but is not limited to) characteristics of the receiving site and long-term management strategies.

In terms of assessing environmental benefit, DECCW will generally approve an exemption for the use of coal washery rejects to fill an open cut or underground coal mine void. DECCW will not consider providing an exemption where the use of coal washery rejects is deemed to be in excess of a site's needs. Creation of emplacement areas is not considered rehabilitation.

Information required in an application

Proponents will need to submit a rehabilitation plan for DECCW's consideration. The rehabilitation plan may be the rehabilitation plan approved by the Department of Industry and Investment (I & I NSW) under a mining lease, or may be an independent rehabilitation plan prepared by a suitably qualified person. In either case, DECCW may request further information if the rehabilitation plan does not include sufficient information for DECCW to make an assessment against the criteria referred to above.

The rehabilitation plan will need to show how it achieves the objectives/purpose of rehabilitation. The purpose of rehabilitation is to return the disturbed land and water back as near as possible to its pre-mining condition, having regard to proposed future land uses, water catchment objectives, biodiversity, soil conservation and landscape integration. The rehabilitated land should have some capability that is of use or value to the community (i.e. avoid land sterilisation) and should be self-sustaining (i.e. minimise risk of soil erosion, subsidence and little or no maintenance for drainage systems).

In respect of how coal washery rejects will be utilised within the rehabilitation works, the rehabilitation plan must include (but is not limited to) the following:

- the location of all applications of coal washery rejects within the rehabilitation area shown on a suitable scaled map
- the quantity (in tonnes) of coal washery rejects used in each location
- the quantity of material that was originally removed from the mine site
- the purpose of the use of coal washery rejects in each location – for example, filling a void (including underground pits), contouring for landscape integration, creating drainage lines
- measures to manage environmental risks or prevent environmental impacts, including (but not limited to) the prevention of soil erosion, erecting water control structures to deal with run-off, and leachate management
- how areas where coal washery rejects is used will be revegetated.

The above information should be provided in the form of a detailed written report which includes descriptions and maps, including information on resulting land contours created by use of coal washery rejects.

In particular, the proponent should demonstrate how the use of the coal washery rejects in rehabilitation is justified, having regard to the amount of material brought on to the site.

If an exemption is granted for the use of a defined amount of coal washery rejects, any coal washery rejects used in excess of the specified amount would not be covered by the exemption.

Fact Sheet 5

Applying for a derelict mine rehabilitation exemption

DECCW will consider exempting coal washery rejects from requiring an EPL or the CWR levy where coal washery rejects is used to rehabilitate derelict mines, as identified under I & I NSW's Derelict Mine Program. Such proposed use must be demonstrated to be bona fide and deliver improved environmental outcomes for the site.

Applying for an derelict mine rehabilitation exemption

DECCW will consider the following broad principles when assessing a site specific application for a derelict mine rehabilitation exemption:

- whether the use of the coal washery rejects provides a genuine environmental benefit and is not just a means of disposal
- whether the rehabilitation of the mine is identified under I & I NSW's Derelict Mine Program
- whether the use of the coal washery rejects is proposed in accordance with a comprehensive rehabilitation plan
- whether relevant planning approval under the EP&A Act is required or has been obtained
- whether the proposed rehabilitation constitutes a valid use of coal washery rejects and is environmentally appropriate, having regard to the objectives of rehabilitation. This should include (but is not limited to) characteristics of the receiving site and long-term management strategies.

In terms of assessing environmental benefit, DECCW will generally approve an exemption for the use of coal washery rejects to fill a mine void. DECCW will not consider providing an exemption where the use of coal washery rejects is deemed to be in excess of a site's needs. Creation of emplacement areas is not considered rehabilitation.

Information required in an application

Proponents will need to submit a rehabilitation plan for DECCW's consideration. The rehabilitation plan may be the rehabilitation plan prepared for the purposes of obtaining planning approval under the EP&A Act or I & I NSW approval, or may be an independent rehabilitation plan prepared by a suitably qualified person. In either case, DECCW may request further information if the rehabilitation plan does not include sufficient information for DECCW to make an assessment against the criteria referred to above.

The rehabilitation plan will also need to meet the requirements referred to in Fact Sheet 4 for active mine rehabilitation. In addition, the applicant must indicate whether planning approval is required under the EP&A Act for the rehabilitation works and, if

so, whether such approval has been obtained and if there are any conditions attached to the consent/approval.

In respect of how coal washery rejects will be utilised within the rehabilitation works, the rehabilitation plan must include (but is not limited to) the following:

- the location of all applications of coal washery rejects within the rehabilitation area shown on a suitably scaled map
- the quantity (in tonnes) of coal washery rejects used in each location
- the purpose of the use of coal washery rejects in each location – for example, filling a void (including underground pits), contouring for landscape integration, creating drainage lines
- measures to manage environmental risks or prevent environmental impacts, including (but not limited to) the prevention of soil erosion, erecting water control structures to deal with run-off, and leachate management
- how areas where coal washery rejects is used will be revegetated.

The above information should be provided in the form of a detailed written report which includes descriptions and maps, including information on resulting land contours created by use of coal washery rejects.

If an exemption is granted in respect of the use of a defined amount of coal washery rejects, any coal washery rejects used in excess of the specified amount would not be covered by the exemption.

Fact Sheet 6

Applying for a resource recovery exemption

DECCW also recognises that there may be opportunities, other than mine-site rehabilitation, where appropriate use of coal washery rejects can benefit the environment. For example, by replacing the use of virgin materials with coal washery rejects, in order to perform an equivalent engineering function.

All proposed uses of coal washery rejects will need to demonstrate genuine environmental benefits before an application for exemption will be considered. DECCW will not consider providing exemptions from EPLs and/or the CWR levy where the proposed use of coal washery rejects is simply to avoid the cost of proper management.

DECCW will consider on a case-by-case basis, exemptions for specific uses of coal washery rejects in such land applications where the applicant can demonstrate that the proposed use represents a bona fide reuse opportunity, and that the proposed use poses minimal risk of harm to the environment or to human health. All applications should address the need for any planning approvals and, if required, any conditions of the consent/approval.

DECCW will consider the following broad principles when assessing resource recovery exemption applications for uses other than mine site rehabilitation:

- whether the coal washery rejects will replace, or is equivalent to, a virgin material in order to perform an equivalent engineering function;
- whether the activity is being undertaken on a sufficiently large scale to warrant consideration as a bona fide alternative to virgin material extraction
- whether genuine environmental benefits are demonstrable at the proposed reuse site over both the short term and the long term
- whether the material is chemically and physically homogenous and compatible with the receiving environment
- whether there are adequate mechanisms to ensure the long term management of the coal washery rejects
- whether an environmental planning instrument or planning approval under the EP&A Act authorises the development and the use is consistent with any conditions of the consent/approval
- whether the proposed use is bona fide and not simply opportunistic disposal.