



# Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014

## The excavated natural material exemption 2014

### Introduction

This exemption:

- is issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation); and
- exempts a consumer of excavated natural material from certain requirements under the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the application of that waste to land, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the excavated natural material order 2014'.

### 1. Waste to which this exemption applies

- 1.1. This exemption applies to excavated natural material that is, or is intended to be, applied to land as engineering fill or for use in earthworks.
- 1.2. Excavated natural material is naturally occurring rock and soil (including but not limited to materials such as sandstone, shale, clay and soil) that has:
  - a) been excavated from the ground, and
  - b) contains at least 98% (by weight) natural material, and
  - c) does not meet the definition of Virgin Excavated Natural Material in the Act.

Excavated natural material does not include material located in a hotspot; that has been processed; or that contains asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate soils (PASS) or sulfidic ores.

### 2. Persons to whom this exemption applies

- 2.1. This exemption applies to any person who applies or intends to apply excavated natural material to land as set out in 1.1.

### **3. Duration**

- 3.1. This exemption commences on 24 November 2014 and is valid until revoked by the EPA by notice published in the Government Gazette.

### **4. Premises to which this exemption applies**

- 4.1. This exemption applies to the premises at which the consumer's actual or intended application of excavated natural material is carried out.

### **5. Revocation**

- 5.1. 'The excavated natural material exemption 2012' which commenced 19 October 2012 is revoked from 24 November 2014.

### **6. Exemption**

- 6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the POEO Act and the Waste Regulation in relation to the consumer's actual or intended application of excavated natural material to land as engineering fill or for use in earthworks at the premises:
- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 of Schedule 1 of the POEO Act;
  - Part 4 of the Waste Regulation;
  - section 88 of the POEO Act; and
  - clause 109 and 110 of the Waste Regulation.
- 6.2. The exemption does not apply in circumstances where excavated natural material is received at the 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.

### **7. Conditions of exemption**

The exemption is subject to the following conditions:

- 7.1. At the time the excavated natural material is received at the premises, the material must meet all chemical and other material requirements for excavated natural material which are required on or before the supply of excavated natural material under 'the excavated natural material order 2014'.
- 7.2. The excavated natural material can only be applied to land as engineering fill or for use in earthworks.
- 7.3. The consumer must keep a written record of the following for a period of six years:
- the quantity of any excavated natural material received; and
  - the name and address of the supplier of the excavated natural material received.
- 7.4. The consumer must make any records required to be kept under this exemption available to authorised officers of the EPA on request.
- 7.5. The consumer must ensure that any application of excavated natural material to land must occur within a reasonable period of time after its receipt.

## **8. Definitions**

In this exemption:

**application or apply to land** means applying to land by:

- spraying, spreading or depositing on the land; or
- 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 excavated natural material to land.

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

## Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption. The current version of this exemption will be available on [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

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

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

The consumer should assess whether or not the excavated natural material is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

Regardless of any exemption 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 receipt of excavated natural material remains subject to other relevant environmental regulations in the POEO Act and the 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 having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

Failure to comply with the conditions of this exemption constitutes an offence under clause 91 of the Waste Regulation.