Waste Management

Last updated: January 2014

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<table>
<thead>
<tr>
<th>Region</th>
<th>Phone Number</th>
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<tr>
<td>Sydney</td>
<td>02 9262 6989</td>
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<tr>
<td>Northern Rivers</td>
<td>1800 626 239</td>
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<tr>
<td>Rest of NSW</td>
<td>1800 626 239</td>
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Overview

Some of the policies regulating waste management in NSW are under review, and are expected to change in the near future. This Fact Sheet will be updated once these changes are in force. Read our eBulletin for weekly updates on important environmental law news from around NSW.

This Fact Sheet explains the legal framework in NSW for waste management, which includes:

- Waste avoidance strategies;
- Pollution licensing of waste facilities;
- Waste offences; and
- Development control over new waste facilities.

Waste management is important in order to:

- Reduce the environmental impact of dumping waste, and
- As a means of recovering resources and reducing the production of waste.

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Legislative framework

In NSW, waste management is regulated under a number of difference laws:

- **Waste Avoidance and Resource Recovery Act 2001 (NSW)**
- **Protection of the Environment Operations Act 1997 (NSW)**
- **Environmental Planning and Assessment Act 1979 (NSW)**
- **Environmental Planning and Assessment Regulation 2000 (NSW)**
- **Waste Avoidance and Resource Recovery Strategy 2007**

Waste avoidance and resource recovery strategies

The **Waste Avoidance and Resource Recovery Act 2001** (Waste Avoidance Act) sets out the priorities and methods by which NSW will reduce its waste generation and improve its resource recovery from waste.\(^2\)

The Environment Minister is ultimately responsible for administering the Waste Avoidance Act.\(^3\) The Chief Executive of the Office of Environment and Heritage (OEH) is responsible for implementing and coordinating resource efficiency and waste reduction and management.\(^4\)

**NSW Waste strategy**

The OEH is required to develop a waste strategy which includes targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.\(^5\) The OEH must report to the Environment Minister every two years on the volumes of waste avoided, produced, recycled or re-used, and how those volumes compare with the targets in the current waste strategy.\(^6\) The OEH must also develop a new waste strategy at least every 5 years.\(^7\) Local councils are required to comply with the objectives of waste strategies, and the Chief Executive of the OEH can request a local council to provide reasons for not complying with the objectives of the current waste strategy.\(^8\)

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3. *Allocation of the Administration of Acts Act 2008 (NSW).*

NSW’s waste strategy is detailed in the *Waste Avoidance and Resource Recovery Strategy 2007*. The 2007 strategy\(^9\) aims to meet the following targets by 2014 (based on 2000 levels):

- An increase in recycling of municipal waste from 26% to 66%;
- Increased recycling of commercial and industrial waste from 28% to 63%;
- Increased recycling of construction and demolition waste from 65% to 76%.

The NSW Government is reviewing the 2007 Strategy and is currently developing the *Draft NSW Waste Avoidance and Resource Recovery Strategy 2013-21*\(^10\). This Strategy is being implemented along with other government initiatives such as *Waste Less, Recycle More*, which includes investment in drop-off centers for household problem wastes, recycling programs in local communities, and campaigns combatting illegal dumping.\(^11\)

**Waste facilities**

**Who operates waste facilities?**

The Waste Assets Management Corporation is responsible for operating the majority of waste facilities located in the Sydney region.\(^12\)

Outside the Sydney region, the majority of waste facilities are run by local councils. Waste facilities can also be run by private operators under a licence from the EPA.

**Do waste facilities require development consent?**

Most waste facilities require development consent before they can be lawfully operated. The relevant local environmental plan (LEP) usually states whether a waste management facility requires development consent or not, or whether it is prohibited in the zone.

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\(^9\) *Waste Avoidance and Resource Recovery Strategy 2007*, para 4.3 (Key result areas), p. 32.


Larger waste facilities are likely to be ‘designated development’. Designated developments include ‘waste management facilities or works’ that:  

- Store, treat, or dispose of waste above a specified quantity; or
- Which are in an environmentally sensitive area (e.g. within 100 metres of a creek) or are within a drinking water catchment or on a floodplain.

A development application for a waste management facility which constitutes designated development must be accompanied by an environmental impact statement. This also means that a person who objected to the development during the submission period may be able to challenge the merits of any development consent in the Land and Environment Court (See our Fact Sheets on Development Applications and Consents and the Land and Environment Court for more information).

Most development applications for a waste management facility also require a pollution licence. The processes for considering the development application and pollution licence application will be linked. See Fact Sheet on Air, Water and Noise Pollution for more information on pollution licences.

For more information on development consents, see our Fact Sheets on Development Applications and consents.

**Case study: Residents challenge an approval for the Collex Waste Transfer Terminal**

In 2003, some Auburn residents successfully challenged a development consent which had been granted by the Planning Minister for a new waste transfer terminal.

The proceedings were brought in the Land and Environment Court. The residents argued that the proposed waste facility was not permissible under the local environmental plan because it was incompatible with the existing and likely future character and amenity of the surrounding area.

The Court declared that the development consent was invalid, and held that the development consent should be refused because of its likely adverse environmental, social and economic impacts on the local area.

However, in response to this court case, the NSW Government introduced special legislation to overturn the Court’s decision and to allow the waste facility to proceed.

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13 Environmental Planning and Assessment Regulation 2000 (NSW), Sch. 3.
14 Environmental Planning and Assessment Act 1979, s 78A(8)(a).
Pollution licences

Scheduled waste facilities

Many waste facilities are ‘scheduled activities’ and require an environment protection licence (also known as a pollution licence) from the EPA. For example, the following activities or facilities require a pollution licence:

- Storage or disposal of hazardous waste, industrial waste or liquid waste;
- Waste storage, transfer, separating or processing facilities;
- Waste incineration facilities; and
- Landfill sites within the Sydney metropolitan area or in environmentally sensitive areas.

The EPA can impose special conditions on a pollution licence, such as:

- Requiring the licence holder to report on the collection, storage and handling of waste at the facility;
- Specifying the times during which, and the routes along which, waste can be transported to the facility, and
- Requiring the licence holder to submit a closure plan in relation to the premises to which the licence applies.

For more information on pollution licensing, see the EDO Fact Sheet on Air, Water and Noise Pollution.

Public register of pollution licences

All pollution licences, including their conditions, can be viewed online on the EPA’s public register.

Non-scheduled waste facilities

Non-scheduled waste facilities are waste facilities (or waste activities) which do not fall within the definition of ‘scheduled activities’ discussed above. This may include small landfill operations.

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17 If the waste facility falls within the definition of ‘waste facilities’ or ‘waste activities’ under the law, then it is a ‘scheduled activity’ and requires a pollution licence See Protection of the Environment Operations Act 1997 (NSW), s. 48, Sch. 1. Note: Part 3 of Schedule 1 contains a detailed list of interpretative provisions (ie definitions) identifying the different types of waste which are regulated under that Act.
18 Protection of the Environment Operations Act 1997 (NSW), s. 75 (Conditions relating to waste).
19 Protection of the Environment Operations Act 1997 (NSW), s. 75(6).
20 Protection of the Environment Operations Act 1997 (NSW), s. 76.
Non-scheduled waste facilities do not require a pollution licence. They are regulated by local councils, unless the facility is operated by a public authority (in which case the EPA is responsible for them).\textsuperscript{21}

However, an occupier of an unlicensed landfill site must give the EPA their details, including the location of their landfill site, and their name and address, within 30 days of being established.\textsuperscript{22}

\textbf{Waste offences}

The NSW Government is responsible for regulating waste through the EPA and local councils. The import and export of hazardous waste is regulated by the Australian Government through the Australian Environment Department.\textsuperscript{23} There are a range of offences relating to waste.

\textbf{Serious waste offences}

It is an offence to willfully or negligently dispose of waste in a way that harms or is likely to harm the environment without lawful authority (e.g. a pollution licence).\textsuperscript{24}

This is a Tier 1 offence (most serious) for which the maximum penalties are $5 million for a corporation and $1 million and/or 7 years imprisonment for an individual.\textsuperscript{25}

For more information about pollution offences, see the EDO \textit{Fact Sheet on Air, Water and Noise Pollution}.

\textbf{Mid-range waste offences}

There are a number of mid-range offences (Tier 2 offences) which relate to waste. Maximum penalties for a corporation are $1 million and $120,000 for each day the offence continues, or for an individual, $250,000 and $60,000 for each day the offence continues.\textsuperscript{26}

It is an offence to pollute land without a pollution licence or exemption under a regulation.\textsuperscript{27} It is also an offence to:

\begin{itemize}
\item Transport waste to a place that cannot lawfully be used as a waste facility for that waste;\textsuperscript{28}
\item Use land as a waste facility without lawful authority;\textsuperscript{29}
\end{itemize}

\begin{footnotes}
\textsuperscript{21}\textit{Protection of the Environment Operations Act 1997} (NSW), s. 6(2).
\textsuperscript{22}\textit{Protection of the Environment Operations (Waste) Regulation 2005} (NSW), cl. 47
\textsuperscript{23}\textit{Hazardous Waste (Regulation of Exports and Imports) Act 1989} (Cth).
\textsuperscript{24}\textit{Protection of the Environment Operations Act 1997} (NSW), s. 115.
\textsuperscript{25}\textit{Protection of the Environment Operations Act 1997} (NSW), s. 119
\textsuperscript{26}\textit{Protection of the Environment Operations Act 1997} (NSW), Part 5.6 Div. 3.
\textsuperscript{27}\textit{Protection of the Environment Operations Act 1997} (NSW), s. 142A.
\textsuperscript{28}\textit{Protection of the Environment Operations Act 1997} (NSW), s. 143.
\end{footnotes}
• Give false or misleading information about waste to another person in the course of dealing with the waste (e.g. lying about what type of waste it is). 30

**Minor waste offences**

There are a number of minor waste offences which relate to the storage and transport of waste. 31

For example:

• All waste must be stored on premises (whether or not the waste was produced on the premises) in an environmentally safe manner. The maximum penalty for a corporation is $22,000; and for an individual it is $11,000. 32

• Waste which is being transported must comply with a number of requirements. Spillage must be avoided, waste must be covered, containers must be secured safely, incompatible wastes must not be mixed or transported together, and waste must be capable of being sampled by the release of valves on the container. 33

**Waste tracking requirements**

Certain types of higher risk wastes, including arsenic, cyanide, and lead, must be tracked when they are transported. 34 Records must be kept by those who consign, transport and receive such waste. 35

**Disposing of asbestos waste**

There are laws governing how asbestos waste can be disposed of. 36 The storage, disposal and transport of asbestos waste is regulated by the EPA and local council. Some of the requirements relating to asbestos include:

• Bonded asbestos material must be securely packaged at all times. 37

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29 Protection of the Environment Operations Act 1997 (NSW), s. 144.
30 Protection of the Environment Operations Act 1997 (NSW), s. 144AA (maximum penalty corporation: $250,000, or individual: $120,000). Only the EPA can prosecute a person who commits this offence: s 144AA(6). The offence of giving false or misleading information about waste to another person in the course of dealing with the waste (e.g. lying about what type of waste it is) can also be prosecuted as a Tier 3 offence by the issue of a penalty notice. See: Protection of the Environment Operations Act 1997 (NSW), s. 222
37 Protection of the Environment Operations (Waste) Regulation 2005, cl. 42(3)(a). Bonded asbestos material is material that contains asbestos, other than friable asbestos material.
• Friable asbestos material must be kept in a sealed container.\(^{38}\)
• Asbestos-contaminated soils must be wetted down.\(^{39}\)
• All asbestos waste must be transported in a covered, leak-proof vehicle.\(^{40}\)
• Asbestos waste must be disposed of at a landfill site that can lawfully receive the waste.\(^{41}\)

It is unlawful to dispose of asbestos waste in domestic garbage bins. It is also unlawful to re-use, recycle or illegally dump asbestos products.\(^{42}\)

The handling and storage of asbestos waste at worksites is regulated by WorkCover NSW.\(^{43}\) You should always contact the landfill beforehand to ensure that they can accept the asbestos, and whether there are any requirements for delivering the asbestos to the landfill.


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**Case study: Transporting asbestos waste\(^{45}\)**

Mr Hanna owns and operates a transport business. In 2010 and 2011 the Land and Environment Court made orders restraining Mr Hanna from transporting building or excavation waste comprising clay, soil, brick, concrete, glass, tiles, timber or asbestos without the required development consent or environment protection licence.

Mr Hanna breached these orders when he transported and deposited eight loads of waste containing asbestos fragments in a residential area of Picnic Point. He was found guilty of contempt for failing to comply with the orders made in 2010 and 2011. In sentencing, the Court considered the environmental harm caused by the unlawful dumping of the waste, particularly the potential for asbestos waste to seriously affect human health. Mr Hanna received a three month suspended sentence on the condition that he enter into a good behavior bond.

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\(^{38}\) _Protection of the Environment Operations (Waste) Regulation 2005_, cl. 42(3)(b). Friable asbestos material is material that contains asbestos and is in the form of a powder or can be crumbled or reduced to powder by hand pressure when dry.


\(^{43}\) _Work Health and Safety Regulation 2011_ (NSW).


\(^{45}\) _Environment Protection Authority v Hanna_ [2013] NSWLEC 41
Case study: Reusing material that could be contaminated

Foxman Environmental Development Services (Foxman) owned two properties. A waste processing and storage facility was operated on one property, and a new residential development was proposed for the other. In 2009 Foxman received development consent for the residential development which allowed for a single dwelling, detached garage, pool, spa, water tanks and fire trail.

Over the next few years, Wollondilly Shire Council conducted a number of inspections which showed fire trails had been created using recovered construction and demolition waste that had come from Foxman’s waste facility.

Foxman argued that while there wasn’t a development consent authorising the use of the fill material, there was a public interest in reusing waste material.

The Court found that the fill material was waste and that Foxman had contravened the Protection of the Environment Operations Act 1997 by transporting waste from the waste facility to the residential development, unlawfully using the land as a waste facility and polluting the land and waters.

Foxman was unable to rely on waste exemptions because the level of asbestos, lead and other foreign material contaminants contained in the land fill was too high.

Foxman also argued that only some of the fill material needed to be removed, such as the surface layer containing asbestos and any hotspots containing asbestos. However, the Court ordered removal of all imported fill material because earthmoving works created a risk that the asbestos would be disturbed, broken down further and potentially release harmful asbestos fibres.

This case demonstrates the importance of testing any fill material that is being re-used in order to identify any contamination or any potential risk to the environment and humans. It also shows that any material that could be considered waste will need to comply with waste, planning and pollution laws.

Foxman appealed the decision, but was unsuccessful.

Glossary

Key to terms used in this Fact Sheet

Environment Minister means the NSW Environment Minister

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46 Wollondilly Shire Council v Foxman Environmental Development Services Pty Ltd (No 5); Foxman Environmental Development Services Pty Ltd v Wollondilly Shire Council [2013] NSWLEC 68

47 Wollondilly Shire Council v Foxman Environmental Development Services Pty Ltd (No 8) [2013] NSWLEC 168.
EPA means the NSW Environment Protection Authority

OEH means the NSW Office of Environment and Heritage

POEO Act means the Protection of the Environment Operations Act 1997 (NSW)

Pollution licence means an environment protection licence from the EPA

Waste Avoidance Act means the Waste Avoidance and Resource Recovery Act 2001 (NSW)

Useful web links

The EPA website contains a large amount of information about how waste and resource recovery is dealt with in NSW.

Have Your Say is an online tool designed to assist the community to have their say in decisions impacting the environment. It includes resources on how to effectively engage in decision-making processes, and maps opportunities for the community to have comment on a range of upcoming decisions.

EDO NSW eBulletin is a free weekly email bulletin with alerts to keep you informed of opportunities to comment on proposed developments at the State and Federal level.