Explanatory paper – waste levy collection at landfills

Reforming waste management – creating certainty for an industry to grow
Explanatory paper – waste levy collection at landfills

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Invitation to comment

Promoted by policy settings that have encouraged resource recovery over the past decade, the waste and resource recovery sector has grown into an economically significant part of our economy. Further growth, including significant job creation, has been identified as possible with the next series of modernised regulatory and policy settings as we move towards a more circular economy in South Australia.

To achieve further resource recovery, a key priority is to amend legislative requirements for how the solid waste levy is collected from landfills. Proposed amendments to the Environment Protection Regulations 2009 (EP Regulations) and the Environment Protection (Waste to Resources) Policy 2010 (Waste to Resources EPP) have now been prepared for public consultation. The following draft legislative amendments are attached for stakeholder feedback:


This explanatory report provides context to the proposed amendments and what they are intended to achieve. The Environment Protection Authority (EPA) is keen to receive your views on the proposed reforms presented in this paper and the accompanying draft legislation, including your views on whether the proposed system will be suitably practicable and achieve the desired objectives. Your feedback will be used to help inform finalisation of the legislative amendments for consideration by the state government.

Submissions are to be made by 21 October 2019 and forwarded by mail or email (preferred) to:

Waste Reform Consultation  
Environment Protection Authority  
GPO Box 2607  
ADELAIDE SA 5001  
Email: epainfo@sa.gov.au (mark subject as Waste Reform Consultation)

All submissions received by the EPA during the consultation period will be acknowledged and treated as public documents unless provided in confidence, subject to the requirements of the Freedom of Information Act 1991, and may be presented on the EPA website and quoted in EPA reports.
Introduction

Through its continuing waste reform program, the South Australian government is seeking to help realise the economic potential from innovation in waste and resource recovery technologies, and at the same time protect our environment. It is committed to providing the right regulatory settings to attract investment, drive innovation and create jobs by seeking to:

- minimise the risk of environmental harm occurring
- support the highest and best, safe available use of secondary materials in accordance with the waste management hierarchy and circular economy principles
- provide more certainty and fairness for lawful operators, promoting investment, innovation and growth of the sector
- halt illegal operators
- ensure accurate payment of the waste levy.

Through its stakeholder engagement process, the EPA identified a series of waste reform priorities to support the sustainable operation of the waste and resource recovery sector. The priority reforms are designed to promote further recovery and substantially address the most problematic issues within the sector, namely:

- static or growing stockpiles
- waste that has the potential to pose environmental risk by inappropriately being reused or promoted as ‘product’
- potentially reusable ‘fill materials’ ending up at landfill due to development pressures
- the need to manage certain problematic waste
- illegal dumping.

As a first key legislative reform step, the Environment Protection (Waste Reform) Amendment Act 2017 (Waste Reform Amendment Act) commenced in November 2017. The amendments modernised and strengthened powers under the Environment Protection Act 1993 (EP Act) to better support a strong, legitimate resource recovery sector and improve the EPA’s ability to prosecute illegal dumping cases.

The Environment Protection (Variation of Act, Schedule 1)(Waste Reform) Regulations 2019 and associated legislative amendments were made in January 2019 and took effect on 1 June 2019 to modernise certain prescribed activities of environmental significance and in consequence of the Waste Reform Amendment Act.

Complementing these reforms, the EPA is working to finalise regulations for new waste facility reporting and record-keeping requirements relating to flow of materials through waste and resource recovery facilities (known as ‘mass balance reporting’) plus associated survey and verification requirements for consideration by the state government. The final regulations will take into account submissions received on the Mass Balance Reporting explanatory paper consulted on in late 2017, outcomes arising from a voluntary reporting pilot conducted across 2018 and systems considerations. This reporting will provide information to support an amended method of waste levy collection from landfills.

Further details of these changes and related policy reforms, including stockpiling controls, financial assurances and energy from waste requirements, is available on the EPA website.

Amending the method of levy collection from landfills is one of the next legislative steps in addressing the key issues affecting the sector, as outlined in the following section. This paper provides an explanation of the proposed legislative amendments for levy collection at landfills and invites you to provide feedback on the proposed system. Your views will be used to inform the final proposal and amendments to the EP Regulations and Waste to Resources EPP, which will be considered by the state government and subsequently presented to Parliament.
The role of waste levy collection in helping address key issues

No single reform option can successfully address all of the issues faced in the waste and resource recovery industry. The EPA is pursuing its suite of priority reforms to better support fair and equitable competition, stability, growth and innovation in the sector. An amended method of waste levy collection at landfills is an important part of a package of reforms aimed to address these issues.

Static or growing stockpiles

Widespread large-scale stockpiling of a range of materials has emerged in South Australia. The most prevalent materials stockpiled include soils, fill and overburden, construction and demolition waste as well as substantial amounts of timber and green waste. Stockpiling has been repeatedly raised by industry as a significant concern due to the potential for levy avoidance through the indefinite holding of material without either recovering and selling the materials or disposing of the material to landfill. In considering this issue, there is a need to balance the reasonable need of many businesses and local governments to undertake a degree of stockpiling against the excessive stockpiling that can create environmental, abandonment or unfair competition risks.

Waste levy avoidance is a significant driver for the stockpiling of waste and other material. The financial benefits of stockpiling can far exceed the potential penalties which can be applied for breaching EPA requirements in relation to stockpiling. An amended method of levy collection at landfills is proposed to ensure that landfills clearly establish the purpose and need for stockpiling, and are effectively held accountable to this, creating a greater incentive for material to be circulated back into the economy and reducing the potential for market distortion.

Waste promoted as ‘product’

Depot operators have a financial incentive to minimise residual wastes requiring disposal to landfill; this helps promote resource recovery. However, some operations may also seek to avoid the disposal of materials by claiming that the material has a purpose, despite the material having no established and independent market. Such waste promoted as ‘product’ is often characterised by processing of mixed waste together with infrequent testing of the ‘products’ for consistency of character. Often, such ‘products’ result in lower levels of residual waste to landfill and are used by the producer or a related entity. The EPA seeks to support the use of only genuine recovered resources, with materials that increase the risk of environmental harm being safely disposed as waste in a timely manner.

An amended method of levy collection at landfills will require the use of waste for on-site operational purposes to be approved in writing by the EPA in order for it to be exempt from payment of the waste levy. This seeks to ensure that on-site operational uses are genuine and are not used as a form of cheap or inappropriate disposal. It is noted that mass balance reporting will require that materials used for on-site operational uses be specifically reported on, allowing validation of reported amounts relative to EPA approvals for material use.
Proposed amendments to the Waste to Resources EPP will clarify that waste stockpiled in contravention of EPA requirements or used on-site for an unapproved operational use remains as waste.

**Potentially reusable ‘fill materials’ ending up at landfill due to developmental pressures**

When land is being developed, time-cost pressures and uncertainty regarding testing and treatment can lead to waste soils simply being removed from development sites, with disposal costs paid for. Internal investigations of waste soil data undertaken by Green Industries SA indicated that from 2004–05 to 2011–12 the majority of waste soil sent to landfill in South Australia contained relatively low-risk materials and was suitable for potential reuse (eg Waste Fill and Intermediate Level Contaminated Soil).

The EP Regulations currently prescribe a $0 waste levy payable for the disposal of ‘waste fill’ (ie clean soil). This removes the waste levy incentive to divert reusable fill materials away from landfills as well as creating potential for misclassification of contaminated soils as waste fill in order to avoid paying the levy.

The $0 waste levy payable for the disposal of waste fill was first introduced in recognition of the benefits of using waste fills as cover material in landfill cells. However, alternative cover materials are increasingly being used which must be disposed of to landfill, and also have physical and chemical properties which make them suitable for use as cover.

The amended method of levy collection from landfills proposes a new approach for discounting payment of the levy for daily cover regardless of the material used. This new approach removes the economic incentive to use excessive waste fill, better provides for use of alternative cover materials and encourages the diversion of reusable fill materials away from landfill and into the economy.
Detailed proposal

Previous consultation

The potential for amending how the solid waste levy is collected at landfills has previously been consulted on through the discussion paper, Reforming waste management – creating certainty for an industry to grow (August–October 2015) and through discussions with EPA-established stakeholder forums. A key aspect of the consultation was consideration of whether the New South Wales approach to waste levy collection (where landfills are required to pay the levy on all material received and then later receive rebates in certain circumstances) should be implemented in South Australia. While the proposed approach adopts some of the features of the New South Wales system, it does not require the upfront payment of levy or administration of rebates which exists in the New South Wales system. Further information is provided at Attachment A, which outlines comments received on the 2015 discussion paper and how these comments have been taken into consideration and responded to.

Proposal overview

Section 113 of the EP Act prescribes that ‘the holder of a licence to conduct a waste depot must pay the prescribed levy to the Authority in respect of waste received at the depot’. Part 6 of the EP Regulations further prescribes which licensees are liable to pay the waste levy and how it is to be calculated, with Part 2 of Schedule 4 prescribing the applicable levy rates.

The EP Regulations prescribe the levy is payable for waste received for the purposes of being disposed of at the depot. The Regulations relating to waste levy collection have not been substantially updated since their introduction in the 1990s (when the waste levy was around $2 per tonne) and do not currently envisage and cater for resource recovery processes at landfills and how the waste levy should be collected in such circumstances.

The draft Environment Protection (Waste Depot Levy) Variation Regulations 2020 (the Variation Regulations) seek to amend the EP Regulations to prescribe an amended method of waste levy collection for waste disposal depots to provide for the various activities which commonly occur at modern landfills. ‘Waste disposal depot’ is defined under Schedule 1 of the EP Act¹ and incorporates landfills, incinerators² and liquid waste disposal facilities. The proposed amendments are only relevant to solid waste disposal and do not alter payment of the waste levy on liquid waste.

The Variation Regulations propose to prescribe that the waste levy is payable for solid waste received at a waste disposal depot (ie landfill) which is:

- disposed of to landfill at the depot,
- used as cover for landfill at the depot, including daily or interim cover (noting that daily cover is proposed to be subject to a separate 10% deduction),
- used at the depot for an operational use (other than an approved operational use),
- the subject of unauthorised stockpiling, or
- stockpiled in contravention of the relevant licence condition.

Material used at a landfill in accordance with an operational use approval or stockpiled in compliance with licence conditions will not attract the levy. This approach is summarised in Figure 1.

¹ Administrative changes to the Schedule 1, ‘Prescribed activities of environmental significance’, were made by the Governor on 17 January 2019 and came into effect on 1 June 2019. This includes changes to waste-related activities, which prescribes waste disposal as a separate activity. A summary of the changes is available at: https://www.epa.sa.gov.au/files/14107_schedule1_change_summary.pdf

² This means incineration for disposal and does not include the use of refuse derived fuel
The proposed amendments apply to landfills, including any resource recovery activities taking place at landfill sites. The amendments do not apply to resource recovery facilities which are not licensed to undertake disposal at the site.

**Landfill with Resource Recovery**
- **Incoming materials**
- **Unapproved operational use**
- **Approved operational use**
- **Genuine recovered products**
- **Landfill cell**
  - (10% deduction for daily cover)

![Diagram of proposed solid waste levy collection system](image)

**Figure 1 Proposed solid waste levy collection system**

**Landfill cover**

*See proposed new clause 3(2) under Part 2 of Schedule 4*

The proposed amendments remove the $0 differential levy for waste fill. Instead, a landfill cover deduction is proposed where any licensee required to cover landfill on a daily or more frequent basis is eligible for a 10% reduction on the total amount of levy payable in a given period. For example, if a landfill disposes of 90 tonnes of waste and 10 tonnes of waste fill or alternative matter for daily cover, then the levy is calculated as:

\[
90 \text{ tonnes waste} + 10 \text{ tonnes daily cover} = 100 \text{ tonnes}
\]

\[
100 \text{ tonnes} \times $110 \text{ (current solid levy rate)} = $11,000
\]

\[
$11,000 – $1,100 \text{ (10% cover reduction)} = $9,900 \text{ of levy payable}
\]

The levy is paid only on the 90 tonnes of waste disposed, with no levy paid on the 10 tonnes of daily cover.

This is consistent with the approach adopted in Western Australia and Victoria, where both prescribe a landfill cover deduction of 8% and 15% respectively.

It is proposed that a landfill which is required to use cover on a daily or more frequent basis be eligible for this deduction regardless of the type of cover material used, including tarpaulins, on site excavated soil, waste fill or alternative daily cover.

This approach is proposed for the following reasons:

- It provides a fair, consistent and administratively simple approach to landfill cover allowances.
- It eliminates the potential for levy rorting through the misclassification of waste as ‘waste fill’.
- It better supports the use of alternative daily covers, which have previously incurred the waste levy. Alternative daily covers are often materials which have no other higher order reuse option and can result in a better waste management outcome than the use of clean soils.
- It does not require licensees to separately measure material used for landfill cover for levy purposes.
- It eliminates the potential for levy rorting by disposing of waste under the guise of use as landfill cover.
An appropriate percentage for deduction of 10% has been determined as this is the proportion of daily cover used at well-managed landfills. If there are particular cases of a kind in which a higher percentage of landfill cover is required by the EPA to be used to ensure good environmental management then the EPA can, with the approval of the Minister, issue a waiver for this purpose under section 116 of the EP Act.

Operational use

See proposed new regulations 69A and 69B

New regulation 69A proposes that the EPA may, on application by the licensee, make a declaration that a use of waste or other matter at a landfill is an approved operational use and therefore does not attract the levy. To do so, the EPA must be satisfied that the use is necessary for operational or environmental management purposes, and the type of waste or matter to be used is suitable for those purposes.

It is proposed that the operational use declaration must be by notice in writing and specify the type and amount of waste or other matter to which it relates, and the purpose and location of the operational use. The declaration may be subject to conditions, such as a limit on the type and amount of material to which the approval applies, or a requirement that it be undertaken within a specified timeframe. The declaration may be varied or revoked by the EPA under certain circumstances as specified in the sub-regulation 69A(2)(d).

Once the declaration has been obtained, any material used in accordance with the conditions will not attract the levy. It is proposed that the levy be only payable on waste used for an operational use if no declaration was obtained for that use or if the operational use was undertaken in contravention of the declaration.

It is intended that the administration of operational use declarations be supported by EPA guidelines on the type of uses it considers appropriate and how an application can be made.

The process for applying for and obtaining an operational use is deliberately flexible, and the proposed regulations are not prescriptive in this regard. This is to enable a declaration to be obtained quickly where necessary (for example in an emergency situation). The written declaration may take the form of a letter or email, and supported with reference to relevant licence conditions, development approvals, or other plans developed for the site. The declaration may include conditions specifying that the operational use must take place within a certain period, or it may be part of an ongoing arrangement (eg if regular maintenance of haul roads is required).

Where an operational use occurs without a declaration, or in contravention of the conditions of a declaration, it is proposed that the EPA will have the ability to require the waste levy to be paid on this material. This is because the maximum penalties which can be applied may be minor in comparison to the financial benefit (and unfair commercial advantage) obtained through the foregone levy payments. For example, the maximum penalty which can be applied through the courts for a breach of licence condition, in the case of a body corporate, is $120,000. By comparison, the levy payable on 10,000 tonnes of waste can be over $1 million. Operational uses can relate to far greater quantities of material than this amount.

Under the proposal, only waste facilities liable to pay the waste levy (ie landfill) would be required to obtain operational use declarations. The declaration would serve only to exclude the licensee from payment of the levy on that material and does not limit the licensee’s obligations to comply with any other requirements under the EP Act. Regional councils paying the waste levy on the basis of the population formula under regulation 75 would not be required to have operational uses approved under the proposed regulations.

If an operational use occurs without approval and levy is required to be paid, whether or not the material used is causing environmental harm and needs to be removed is a separate consideration and may be subject to separate EPA direction (eg in the form of an environment protection order).
Waste levy collection at landfills

The proposed changes aim to provide a fairer approach for all landfills by enabling genuine operational uses of material to occur, while ensuring that individual sites will not gain a competitive financial advantage by undertaking operational use as a form of cheap or inappropriate disposal.

Stockpiling

See proposed new clause 3(4) under Part 2 of Schedule 4

As outlined earlier, the Variation Regulations propose the levy is payable on waste at a landfill that is the subject of unauthorised stockpiling or waste which has been stockpiled at the depot in contravention of the relevant licence.

‘Unauthorised stockpiling’ is defined in the EP Act and ‘is taken to have occurred if a maximum allowable stockpile limit imposed by or under the Act in relation to the waste or other matter has been exceeded’. This includes maximum allowable stockpile limits imposed by licence condition.

If there is a need for a licensee to temporarily stockpile additional material then an amendment to the relevant licence condition may be negotiated with the EPA if appropriate.

Waste stockpiled in contravention of the licence may include, for example, waste of a specified type stockpiled outdoors when the licence requires waste to be stockpiled under cover.

If a licence does not contain any conditions or maximum limits relating to stockpiling then the licensee would not be liable to pay the levy on any stockpiled material.

As with operational uses, it is proposed that the EPA have the ability to require the levy to be paid on waste stockpiled at a landfill in contravention of licence conditions or maximum limits. Other maximum penalties which can be applied may be minor in comparison to the financial benefit obtained through the foregone levy payments. This is important to ensure that financial incentives align with environmental objectives.

Penalty for failure to pay the waste levy

See proposed amendments to regulation 70

The Variation Regulations propose to amend regulation 70 relating to the penalty for failure to pay the levy.

It is proposed that the current penalty of ‘the higher of $300 or 5% of the amount due for each month (or part of a month) for which the default continues’ be retained, with specific circumstances prescribed in which a reduced penalty may be applied, as follows:

• If the licensee satisfies the EPA that all reasonable and practicable measures were taken to prevent the default from occurring – the higher of $200 or 3.5% per month.
• If the default is identified and voluntarily reported to the EPA by the licensee before the EPA has notified the licensee of the default – the higher of $250 or 4% per month.
• If both preceding paragraphs apply – the higher of $150 or 2.5% per month.

By offering lower penalties in these circumstances, the intention is to provide a greater incentive for licensees liable to pay the levy to have appropriate processes, checks and balances in place to ensure they are paying the levy correctly. This will encourage self-auditing and voluntary reporting if an error in the amount of levy paid has been identified.

It is intended that further guidelines will be developed to advise on what the EPA considers to be ‘reasonable and practicable measures’ for the purposes of ensuring correct payment of the waste levy.
Presumptions and estimates

*See proposed new regulations 75A and 75B*

The Variation Regulations propose to insert a new regulation to prescribe that, if the EPA is of the opinion that records relating to material received or present at the depot are inadequate and as a result, the EPA is of the opinion that it is necessary in order to determine the amount of levy payable, the EPA is entitled to make presumptions and estimates in accordance with the regulations.

The ability for the EPA to make presumptions and estimates in these circumstances is important to ensure a fair and robust system, and that those who seek to rort the system are effectively held accountable.

Regulation 75A(2) prescribes the circumstances in which records will be taken to be inadequate:

- if there are no records available for the period,
- if the records are incomplete, inaccurate or inconsistent with other records, or
- the methods used to obtain the information in those records were not appropriate.

Proposed regulation 75A(3) further prescribes the presumptions the EPA would be entitled to make in those circumstances, and 75A(4) prescribes the information the EPA would need to have regard to in making any estimates.

Proposed regulation 75B further supports this by prescribing that the EPA may, for the purposes of determining the amount of levy payable, require the licensee, by notice in writing, to provide:

- details of a volumetric survey,
- reports of specified tests or monitoring, or
- any other information required in connection with determining the amount of levy owed and verified, if the EPA requires, by a statutory declaration.

Scope of application

*See proposed amendment to clause 4 of the Waste to Resources EPP*

Section 113 of the EP Act prescribes that the levy is payable 'in respect of waste received at the depot'. This means that material used to construct a landfill site prior to it becoming operational is not 'waste received at the depot' since the depot was not operational. Similarly, if virgin material is purchased for an operational use at the site then this is not 'waste received at the depot' since at no point would that material meet the definition of waste under the EP Act (for example, gravel purchased from a quarry for construction of cell lining, or steel beams purchased for construction of a shed).

Clause 4 of the Waste to Resources EPP further prescribes that material does not constitute waste if:

- it constitutes a product that meets specifications or standards published from time to time or approved in writing by the Authority, or
- it constitutes a product that is ready and intended for imminent use without the need for further treatment to prevent any environmental harm that might result from such use.

To support the proposed amendments to the collection of waste levy, an amendment is proposed to clause 4 to clarify that material remains waste when it is disposed of, used or handled at a landfill in any of the following ways:

- cover for landfill, including daily or interim cover (noting that daily cover is to be subject to a separate 10% deduction),
- unapproved operational use,
- unauthorised stockpiling, or
- stockpiling in contravention of the relevant licence.
Attachment A  Further information on previous submissions

In response to the discussion paper, *Reforming waste management – creating certainty for an industry to grow* (August–October 2015), the EPA received 34 submissions that commented specifically on an amended method of waste levy collection, from a total of 59 submissions. The submitter profile is shown in Figure 2.

The following provides a summary of comments received in relation to an amended method of levy collection from landfills, the role of differential levies and the potential for applying the levy at resource recovery facilities, as well as an explanation of how these comments have been taken into consideration.

**Collection of the levy from landfills**

The 2015 discussion paper highlighted the potential for changing how the waste levy is collected from landfills, particularly to address disagreement over levy application where landfills undertake on-site resource recovery operations or use recovered materials on site. It was proposed that the EP Regulations could be updated to explicitly provide that all materials received at a landfill are ‘waste’ with levy applicable and then specify the circumstances in which materials are excluded from attracting the levy or for which rebates or discounts may be applied.

Reference was given to potentially implementing a system similar to that used in New South Wales, where the levy is paid on all material received, with deduction or rebates granted for approved operational uses or once a landfill can demonstrate that material has been moved off site for resource recovery or lawful reuse. The 2015 discussion paper invited feedback on the potential advantages and disadvantages of this type of approach.

Submissions highlighted that levy avoidance is a critical issue which needs to be addressed to provide greater certainty to the industry. Several submissions flagged that the current system, which enables landfills to classify material as product (rather than waste) and to reuse materials on site without specific EPA approval is problematic and enables levy avoidance to occur. As such, some submissions supported an approach similar to New South Wales, where the levy is charged up front on all material received at a landfill.

The amendments currently proposed aim to minimise potential for levy avoidance and promote fairer market conditions. The proposed approach would require operational use of material to be approved in order for it to be exempt from levy payment. Proposed amendments would ensure that where an operational use has not been approved, this material will remain waste and be subject to levy payment.

Many submissions raised concerns that if the waste levy is required to be paid on all material received, which is then later subject to a rebate, that this would result in increased gate fees and additional costs being passed onto customers.
Submitters also highlighted that recovering paid levy can be difficult and rebates can be problematic to calculate once material has been subject to processing or moisture loss.

In order to avoid this type of complexity, the proposed amendments would not require the administration of levy rebates. For example, at no point would payment of the levy on this material be required if material is received at a landfill, stockpiled in compliance with licence conditions, and later sent off site for use or for sale.

Many submissions highlighted that materials necessary for operational use or daily cover should not attract the levy at any point, including the stockpiling of materials for future operational use such as waste fill stockpiled for capping.

Under the proposed amendments, payment of the levy on this material would not be required provided that operational uses are approved and undertaken in accordance with any conditions, and materials are stockpiled in compliance with licence conditions. This includes materials which are stockpiled over time for future use in landfill cell capping (capping is considered an operational use). Licensees who are required to use landfill cover on a daily or more frequent basis would also be eligible for a landfill cover deduction from their levy payments.

**Differential levies**

The 2015 discussion paper sought stakeholder views on the role of differential levies. There were mixed views and many submissions expressed support for differential levies on some types of waste which do not have resource recovery options and must be disposed of, particularly hazardous wastes such as asbestos. However, other submissions stated that there should be no differential levies since this adds complexity to the system and creates potential for rorting of the levy through misclassification.

Subsequent to this consultation, differential levies have been put in place by a waiver of the full levy for the disposal of packaged asbestos and a partial waiver for the disposal of shredder floc from scrap metal recovery.

**Levy liability for resources recovery facilities**

The 2015 discussion paper considered the potential for a levy liability for resource recovery facilities and transfer stations, where the waste levy would become payable at these facilities if they exceed authorised stockpile limits at the site (similar to the approach used in New South Wales). The paper invited feedback on whether this would be an effective mechanism to address excessive stockpiling and the potential business impacts that may result from this approach.

Submissions received reiterated that individual businesses gain financial advantages through excessive stockpiling by delaying or avoiding paying the waste levy. This is an important issue which must be addressed in order to provide certainty to the waste and recycling market. While many submissions highlighted that a levy liability for resource recovery facilities would likely be effective in addressing stockpiling, concerns are raised about the unintended impacts and additional costs this approach could have on businesses, particularly regional and council-run facilities. This approach could increase risks for resource recovery businesses and ultimately stifle innovation, make it difficult for new businesses to enter the market and increase the costs of recycling.

Many submissions highlighted that the introduction of mass balance reporting and improved licence conditions relating to stockpiling for resource recovery facilities would greatly assist in reducing problematic stockpiling, and a levy liability for these facilities may be unnecessary.

The EPA agrees and is pursing the implementation of mass balance reporting as well as developing improved licence conditions relating to stockpiling at waste and resource recovery facilities using powers gained through the Waste Reform Amendment Act. In addition, the EPA is developing a policy for the application of financial assurances to stockpiling which has an associated risk of abandonment or environmental harm.

The EPA will monitor the success of these reforms for addressing excessive stockpiling at resource recovery facilities. If necessary, it may further consider the implementation of a levy liability for resource recovery facilities at a later date.
South Australia

Environment Protection (Waste Depot Levy) Variation Regulations 2020

under the Environment Protection Act 1993

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Part 1—Preliminary

1—Short title
These regulations may be cited as the Environment Protection (Waste Depot Levy) Variation Regulations 2020.

2—Commencement
These regulations come into operation on X/XX/2020.
3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of Environment Protection Regulations 2009

4—Insertion of heading to Part 6 Division 1 and regulation 68A

Before regulation 69 insert:

Division 1—Preliminary

68A—Interpretation

In this Part—

approved operational use declaration—see regulation 69A;

license, in relation to a waste depot, means the holder of the licence to conduct the waste depot.

5—Insertion of regulations 69A and 69B

After regulation 69—insert:

69A—Approved operational use

(1) The Authority may, on application by the holder of a licence to conduct a waste depot, make a declaration (an approved operational use declaration) that a use of waste or other matter at the depot is an approved operational use if the Authority is satisfied that—

(a) the use of waste or other matter at the depot in the manner proposed is necessary for operational or environmental management purposes; and

(b) the type of waste or matter proposed to be used for that operational use is suitable for those purposes.

Examples—

The following may be declared to be approved operational uses:

(a) construction or maintenance of landfill cells or internal roads;

(b) final capping of landfill cells (but not the daily or interim covering of landfill);

(c) mulching purposes.

(2) A declaration under this regulation—

(a) must be by notice in writing; and

(b) must specify—

(i) the type and amount of the waste or other matter to which the declaration applies; and

(ii) the purpose and location of the operational use; and
Draft

Environment Protection (Waste Depot Levy) Variation Regulations 2020
Variation of Environment Protection Regulations 2009—Part 2

(c) may be subject to the following conditions:

(i) a condition requiring the operational use to occur in a specified manner or within a specified time frame;

(ii) a condition requiring plans, specifications or reports in connection with the operational use to be prepared by a person with specified qualifications;

(iii) a condition requiring works in connection with the operational use to be carried out by a person with specified qualifications;

(iv) a condition requiring records relating to the operational use to be kept in a specified manner or form;

(v) a condition requiring such records to be available for inspection by an authorised officer;

(vi) such other conditions as the Authority thinks fit; and

(d) may be varied or revoked by the Authority at any time if the Authority is satisfied—

(i) that a condition of the declaration has been contravened; or

(ii) there is potential for environmental harm (or further environmental harm) to occur if an operational use to which the declaration relates were to continue, or

(iii) that the declaration was improperly obtained; or

(iv) that other circumstances exist, which in the opinion of the Authority, make it necessary or appropriate to do so.

69B—Authority may require further information

A person who makes an application under this Division must provide the Authority with any information required by the Authority in connection with the determination of the application, verified, if the Authority so requires, by statutory declaration.
6—Insertion of heading to Part 6 Division 2

Before regulation 70—insert:

**Division 2—Waste depot levy**

7—Variation of regulation 70—Waste depot levy (section 113 of Act)

Regulation 70(2)—delete subregulation (2) and substitute:

(2) Pursuant to section 113(4) of the Act, the penalty for a failure to pay the levy as required under that section is—

(a) in a case where the licensee satisfies the Authority that all reasonable and practicable measures were taken to prevent the default from occurring—the higher of $200 or 3.5% of the amount due for each month (or part of a month) for which the default continues; or

(b) in a case where the default is identified and voluntarily reported to the Authority by the licensee before the Authority has notified the licensee of the default—the higher of $250 or 4% of the amount due for each month (or part of a month) for which the default continues; or

(c) in a case where both preceding paragraphs apply—the higher of $150 or 2.5% of the amount due for each month (or part of a month) for which the default continues; or

(d) in any other case—the higher of $300 or 5% of the amount due for each month (or part of a month) for which the default continues.

8—Insertion of heading to Part 6 Division 3

Before regulation 71 insert:

**Division 3—Determining mass or volume of waste or other matter**

9—Insertion of regulations 75A and 75B

After regulation 75—insert:

**75A—Presumptions and estimates if records are inadequate**

(1) If the Authority is of the opinion that records that relate to waste or other matter received or present at a waste depot during any period (being records required for determining the waste depot levy payable under this Part) are inadequate, and as a result, the Authority is of the opinion it is necessary in order to determine the levy payable, the Authority is entitled to make presumptions and estimates in relation to the waste or matter in accordance with this regulation.
(2) For the purposes of subregulation (1), without limiting the circumstances in which records will be taken to be inadequate, records relating to a period will be taken to be inadequate if—
   
   (a) there are no records relating to waste or other matter received or present at the depot during the period; or
   
   (b) the records relating to waste or other matter received or present at the depot during the period are incomplete, inaccurate or inconsistent with other records (whether kept by the licensee, the occupier of the waste depot or another person or body); or
   
   (c) the information contained in the records relating to waste or other matter received or present at the depot during the period has not been obtained by methods that, in the opinion of the Authority, are appropriate.

(3) The Authority is entitled to presume 1 or more of the following in relation to any waste or other matter at the waste depot (subject to the licensee establishing the contrary):

   (a) that the waste or matter is waste or matter that has been received at the depot;
   
   (b) that the waste or matter is waste or matter that has been disposed of to landfill at the depot;
   
   (c) that the waste or matter has been used for an operational use other than in accordance with an approved operational use declaration in relation to the depot;
   
   (d) that unauthorised stockpiling of the waste or matter has occurred at the depot;
   
   (e) that the waste or matter was stockpiled in an area of the depot, or in any manner, in contravention of the licence;
   
   (f) that any matters referred to in a preceding paragraph commenced or occurred on the date on which the Authority first became aware that the relevant records were inadequate;
   
   (g) that the waste or matter at the waste depot is waste or matter of a specified kind;
   
   (h) that the waste or matter has been—
      (i) generated within metropolitan Adelaide; or
      (ii) generated from waste or other matter generated in metropolitan Adelaide.

(4) In estimating the tonnage of waste or other matter received at the waste depot during the period, the Authority must have regard to the following (to the extent considered relevant by the Authority):

   (a) details of any volumetric survey of landfill at the depot;
(b) details of any stockpile volume assessment of landfill at the depot (made using assessment or modelling methodologies approved by the Authority for the purposes of this regulation);

(c) available records in respect of the depot;

(d) any information provided by an authorised officer who has seen or inspected the depot;

(e) any information available to the Authority, including images and data from cameras and GPS devices and information from persons not involved with the operation of the depot;

(f) any other details provided to the Authority in relation to the depot under regulation 75B.

75B—Authority may require reports of volumetric surveys or tests or monitoring

(1) The Authority may, for the purposes of determining the amount of the waste depot levy payable by the licensee, by notice in writing, require the licensee to provide the Authority, within a specified time—

(a) with details of a volumetric survey of—

(i) landfill at the depot; or

(ii) any other waste or matter (other than landfill) that has been abandoned, stockpiled, used to cover landfill, or used for an operational use, at the depot, prepared by a licensed or registered surveyor under the Survey Act 1992 or a person, or person of a class, approved by the Authority; or

(b) with reports of specified tests or monitoring of—

(i) landfill at the depot; or

(ii) any other waste or matter (other than landfill) that has been abandoned, stockpiled, used to cover landfill, or used for an operational use, at the depot, including, if the Authority considers it necessary, reports prepared, or tests or monitoring undertaken, by a person with specified qualifications; or

(c) with any other information required by the Authority in connection with the determination of the amount of the waste depot levy, verified, if the Authority so requires, by statutory declaration.

(2) A volumetric survey provided to the Authority under subregulation (1) must—

(a) show contour lines at not more than 1 metre intervals; and

(b) have an error margin of not more than 5%; and
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Variation of Environment Protection Regulations 2009—Part 2

(c) be in accordance with any other requirements specified by the Authority in the notice.

10—Variation of Schedule 4—Fees and levy

Schedule 4, Part 2—delete the Part and substitute:

Part 2—Waste depot levy

3—Waste depot levy

(1) Pursuant to section 113 of the Act (but subject to Part 6 of these regulations and this clause), the prescribed levy payable by the holder of a licence to conduct a waste disposal depot in respect of waste received at the depot is—

(a) for solid waste—

(i) in the case of a licence holder that is a council that has made an election under regulation 75 (per tonne of solid waste disposed of at the depot) $55

(ii) in the case of any other licence holder (per tonne of designated solid waste disposed of, used or handled at the depot)—

(A) if the depot is situated outside of metropolitan Adelaide and the waste has been brought to the depot from premises situated outside of metropolitan Adelaide $55

(B) if the depot is situated within metropolitan Adelaide and the waste has been brought to the depot by or on behalf of a council the area of which lies wholly outside of metropolitan Adelaide $55

(C) in any other case $110

(b) for liquid waste (per kilolitre disposed of at the depot) $38.30

(2) Subject to subclause (3), the amount of the levy payable in respect of the waste under subclause (1)(ii) is to be reduced by 10% if, under the licence, the waste disposal depot is required to cover landfill at the depot with material on a daily or more frequent basis.

(3) A reduction in the levy under subclause (2) does not apply in respect of the levy payable on waste that has been the subject of unauthorised stockpiling, stockpiling of the waste at the depot in contravention of the relevant licence, or that has been used for an operational use other than in accordance with an approved operational use declaration.

(4) For the purposes of subclause (1)(ii), designated solid waste means solid waste (including waste fill)—

(a) disposed of to landfill at the depot; and
(b) used as cover (including daily or interim cover) for landfill at the depot; and

(c) used at the depot for an operational use, other than an operational use in accordance with a previously obtained approved operational use declaration; and

(d) that is the subject of unauthorised stockpiling at the depot; and

(e) that has been stockpiled at the depot in contravention of the relevant licence.

(5) In this clause—

approved operational use declaration—see regulation 69A;

waste disposal depot means a depot, facility or works referred to in Schedule 1 Part A clause 3(3) of the Act.

Note—As required by section 10AA(2) of the Subordinate Legislation Act 1978, the Minister has certified that, in the Minister’s opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council

on

No  of 2019
South Australia


under section 32 of the Environment Protection Act 1993

Part 1—Preliminary

1—Short title

This notice may be cited as the Environment Protection (Waste to Resources) Policy (Waste Depot Levy) Amendment Notice 2020.

2—Commencement

The amendment of the environment protection policy effected by this notice comes into operation on xx/xx/2020.

3—Amendment provisions

In this notice, a provision under a heading referring to the amendment of a specified environment protection policy under the Environment Protection Act 1993 amends the environment protection policy so specified.

Part 2—Amendment of Environment Protection (Waste to Resources) Policy 2010

4—Amendment of clause 4—Certain material declared to be waste

(1) Clause 4—after "the Act" insert:

(but subject to subclause (2))

(2) Clause 4—after its present contents (as amended by this clause) now to be designated as subclause (1) insert:

(2) Without limitation, subclause (1) does not apply to material when it is disposed of, used or handled at a waste disposal depot in any of the following ways:

(a) by its use as cover (including daily or interim cover) for landfill;

(b) by its operational use (other than the operational use of the material in accordance with a previously obtained approved operational use declaration under regulation 69A of the Environment Protection Regulations 2009);

(c) by its unauthorised stockpiling;

(d) by its stockpiling in contravention of the relevant licence.
(3) In this clause—

\textit{waste disposal depot} means a depot, facility or works referred to in Schedule 1 Part A clause 3(3) of the Act.

\textbf{Made by the Minister}

\textit{on}

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