



## The recovered fines exemption March 2022

### Important information about this resource recovery exemption

Please read this exemption carefully.

You must comply with all the conditions of this exemption as in force at the time you received the **recovered fines** and **blended recovered fines**.

The current version of this exemption is available on [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

The EPA may vary or revoke this exemption by publishing a further notice in the Government Gazette.

Bolded terms used in this exemption are defined in clause 8 (below).

### What this exemption does and does not do

This notice exempts persons who apply **recovered fines** and **blended recovered fines** to land, from complying with certain provisions of the *Protection of the Environment Operations Act 1997* (NSW) (“POEO Act”) and the *Protection of the Environment Operations (Waste) Regulation 2014* (“POEO Waste Regulation”), provided that the conditions of this exemption are complied with.

This exemption is concerned with those that use **recovered fines** and **blended recovered fines**, while the corresponding **resource recovery order** is concerned with those that supply the **recovered fines** and **blended recovered fines**.

This notice also exempts a person who is a **consignor, authorised agent, transporter, receiver** or an **occupier of a premises** to which this exemption applies from certain waste tracking requirements under Part 4 of the **POEO Waste Regulation** in relation to waste transported within NSW, provided the person complies with the conditions of this exemption.

The EPA’s intent is that if a user of **recovered fines** and **blended recovered fines** complies with the conditions of this exemption and **suppliers** of that waste comply with the requirements of the corresponding **resource recovery order**, that the risk of harm, or potential harm, to human health and the environment, by the use of the waste, will be reduced.

However, the EPA does not guarantee that if a user of **recovered fines** and **blended recovered fines** complies with the conditions of this exemption, and **suppliers** of that waste comply with the requirements of the corresponding **resource recovery order**, that human health or the environment will not be harmed or exposed to the potential for harm by the use of the waste.

Nor does the EPA guarantee that if a user of **recovered fines** and **blended recovered fines** complies with the conditions of this exemption, and **suppliers** of that waste comply

with the requirements of the corresponding **resource recovery order**, that the waste is suitable, or safe, for its use.

Users and **suppliers** of **recovered fines** and **blended recovered fines** use, and deal with, the waste at their own risk. Accordingly, you should make your own inquiries as to whether or not the waste is fit for purpose and whether the use will cause harm to human health and/or the environment. You may need to seek expert advice.

### Your responsibilities

It is your responsibility to identify and obtain all other approvals necessary for the relevant activities before you receive **recovered fines** and **blended recovered fines**. This exemption does not:

- warrant or imply the lawfulness of the activity under any Act or law, or that approvals necessary under any laws have, or will be, approved; or
- alter the requirements of any Act or law or the need to obtain any other (or further) approvals under any Act or law.

You should also:

- ensure that whoever supplies you with the **recovered fines** and **blended recovered fines** can provide you with a **statement of compliance** for the first supply of each **batch of waste** to you certifying that the **recovered fines** and **blended recovered fines** complies with each relevant **resource recovery order**.
- request that the **supplier** provide you with the test results from all the sampling of the **recovered fines** or **blended recovered fines** from **batches of waste** that you are being supplied with, pursuant to cl 95(1) of the **POEO Waste Regulation**.

### Failure to comply with this exemption

You may no longer be covered by this exemption if:

- you fail to comply with the conditions of this exemption;
- the waste fails to meet the requirements for the **recovered fines** or **blended recovered fines** in the corresponding **resource recovery order**; or
- the **supplier** of the **recovered fines** and **blended recovered fines** fails to comply with the requirements of the corresponding **resource recovery order**, except for notification, record keeping and reporting requirements (other than requirements to keep test results).

It is also an offence not to keep records required to be made by this exemption under clause 94(1) of the **POEO Waste Regulation**.

It is also an offence under s 144AAB of the **POEO Act** to reuse or recycle waste containing **asbestos**, so you must not apply to land any **recovered fines** or **blended recovered fines** that contains **asbestos**.

If found guilty of this or another offence under the **POEO Act** or the **POEO Waste Regulation**, you may be liable to pay a fine, face imprisonment or be subjected to other penalties or court orders. The same risk applies if you do anything that is not specifically exempted by this exemption.

Please read this exemption and the corresponding **resource recovery order** carefully and seek legal advice if you are unsure about any of your obligations.

## The recovered fines exemption March 2022

### 1. WASTE TO WHICH THIS EXEMPTION APPLIES

1.1 This exemption applies to **recovered fines** or **blended recovered fines**.

1.2 In this exemption:

1.2.1 **recovered fines** means excavated soil (including but not limited to natural materials such as sandstone, shale and clay), or a soil substitute (including but not limited to bricks, concrete, tiles, and ceramics), that must:

- (a) have a maximum particle size of 9.5mm;
- (b) be derived from **construction and demolition waste** that has been mechanically sieved or screened to remove **physical contaminants**, and may include residues from the mechanical sieving or screening of skip bin waste; and
- (c) not include **acid sulfate soils**.

1.2.2 **blended recovered fines** means **recovered fines** that is blended with any of the following in the circumstances set out in clause 5.2 of *The recovered fines order March 2022*:

- (a) **virgin excavated natural material**.

### 2. ACTIVITIES TO WHICH THIS EXEMPTION APPLIES

2.1 This exemption applies when **recovered fines** or **blended recovered fines** is **applied to land** at a **premises**.

2.2 **Recovered fines** and **blended recovered fines** must only be **applied to land**:

2.2.1 for use in **earthworks**.

### 3. THE EXEMPTION

3.1 Subject to clauses 3.3 and 4, an **occupier** of a **premises** that **applies to land recovered fines** or **blended recovered fines** for the uses described in clause 2.2 is exempt from complying with the following provisions of the **POEO Act** and the **POEO Waste Regulation** in respect of that **recovered fines** or **blended recovered fines**:

3.1.1 section 48 of the **POEO Act** in respect of the scheduled activities described in clauses 39 and 42 of Schedule 1 to the **POEO Act** relating to waste disposal (land application) and waste storage;

3.1.2 section 88 of the **POEO Act**;

3.1.3 clause 109 of the **POEO Waste Regulation**; and

3.1.4 clause 110 of the **POEO Waste Regulation**.

3.2 Subject to clauses 3.4 and 4, a **consignor, transporter, or receiver** of **recovered fines** or **blended recovered fines** is exempted from Part 4 of the **POEO Waste Regulation**, only in so far as Part 4 applies to the transportation of the waste to the **occupier's premises**, within NSW.

3.3 For the exemption in clause 3.1 to apply, all the conditions of this exemption must be complied with.

3.4 For the exemption in clause 3.2 to apply to a **consignor, transporter or receiver** of the **recovered fines** or **blended recovered fines**, that person must comply with all the conditions of this exemption relating to:

3.5.1 that **recovered fines** or **blended recovered fines**; and

3.5.2 that person.

#### 4. EXCEPTIONS TO THE RESOURCE RECOVERY EXEMPTION

4.1 The exemptions in clause 3 do not apply to an **occupier** of a **premises** that holds an **environment protection licence** authorising the carrying out of any of the following scheduled activities at the **premises** where the waste is received:

4.1.1 energy recovery under clause 18 of Schedule 1 to the **POEO Act**;

4.1.2 resource recovery under clause 34 of Schedule 1 to the **POEO Act**;

4.1.3 waste disposal (application to land) under clause 39 of Schedule 1 to the **POEO Act**;

4.1.4 waste disposal (thermal treatment) under clause 40 of Schedule 1 to the **POEO Act**;

4.1.5 waste processing (non-thermal treatment) under clause 41 of Schedule 1 to the **POEO Act**; or

4.1.6 waste storage under clause 42 of Schedule 1 to the **POEO Act**.

4.2 The exemptions in clause 3 do not apply to an **occupier** of a **premises** in respect of **recovered fines** or **blended recovered fines** received from offsite and stored for transfer to another **premises**, or that is subsequently transferred to another **premises**, for the purposes of **application to land**.

#### 5. CONDITIONS OF THIS EXEMPTION

5.1 For the exemption in clause 3.1 to apply, the **occupier** of the **premises** must have:

5.1.1 prior to receiving the **recovered fines** or **blended recovered fines** at the **premises**:

(a) all the necessary development consents under Part 4 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act");

(b) all the necessary approvals to carry out the project or infrastructure under the former Part 3A or Division 5.2 of Part 5 of the **EP&A Act**; and

(c) complied with any applicable requirements in Division 5.1 of Part 5 of the **EP&A Act**

for the uses described in clause 2.2; and

5.1.2 on or before the first supply of the **batch of waste** of the **recovered fines** or **blended recovered fines** to the **premises** by a **supplier** under a corresponding **resource recovery order**, obtained a **statement of compliance** from that **supplier**.

5.2 This exemption is also subject to compliance with the following conditions:

5.2.1 the **recovered fines** or **blended recovered fines** must meet the requirements of *The recovered fines order March 2022* at the time it is received at the **premises**.

5.2.2 each **supplier** has complied with the requirements of *The recovered fines order*

March 2022 except for the notification, record keeping and reporting requirements other than the requirement to keep test results.

5.2.3 The **recovered fines** or **blended recovered fines** must not contain **asbestos**.

5.2.4 The **recovered fines** or **blended recovered fines** must only be **applied to land** in accordance with clause 2.

5.2.5 Persons subject to this exemption must record and keep the following information or documents for at least six years from the date on which the record was made, and make the record available for inspection by an **authorised officer**, on request:

- (a) the name, address and contact details of each **supplier** that provided the **recovered fines** or **blended recovered fines** and the date each **batch of waste** was received;
- (b) the name and contact details of each person that transported the **recovered fines** or **blended recovered fines** to the **premises**, including the registration of the vehicle it was transported in;
- (c) the name and contact details of each **occupier** of the **premises** that the **recovered fines** or **blended recovered fines** was received at;
- (d) the amount of **recovered fines** or **blended recovered fines** received (expressed in tonnes);
- (e) for an **occupier of premises only** - a map of the **premises**, with a record identifying where each **batch of waste** received from a **supplier** was **applied to land** by reference to the unique batch identifier; and
- (f) the **statement of compliance** for each **batch of waste**, as referred to in clause 5.1.2 above.

5.2.6 Persons subject to this exemption must notify the EPA of any failure to comply with this exemption by emailing [info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au) within 7 days of the failure.

## 6. DURATION

6.1 This exemption commences on **XXX** March 2022. The EPA may vary or revoke this order by notice published in the Gazette.

## 7. REVOCATION

7.1 *The “batch process” recovered fines exemption 2014, and The “continuous process” recovered fines exemption 2014* are revoked from XX March 2022.

## 8. DEFINITIONS

8.1 In this exemption:

**acid sulfate soil** includes potential **acid sulfate soil** and means naturally occurring sediments and soils which contain sulfides such as iron sulfide and iron disulfide or their precursors, as evidenced by:

- (a) If sampling and testing is undertaken for **acid sulfate soil** using a **NATA** accredited chromium reducible sulfur test method – a net acidity greater than 18 mol H<sup>+</sup>/tonne; or
- (b) If sampling and testing is not undertaken for **acid sulfate soil** – a low or high probability of presence of acid sulfate soil at the **premises** from which the excavated soil was recovered based on the applicable Acid Sulfate Soil Risk Maps

(published by the former Department of Land and Water Conservation and available at: <https://www.environment.nsw.gov.au/topics/land-and-soil/soil-degradation/acid-sulfate-soils>).

**asbestos** has the same meaning as in Schedule 1 of the **POEO Act**.

**applied to land** means:

- (a) spraying, spreading or depositing it on the land, or
- (b) ploughing, injecting or mixing it into the land, or
- (c) filling, raising, reclaiming or contouring the land.

**authorised officer** has the same meaning as in the **POEO Act**.

**batch of waste** means:

- (a) a segregated stockpile or truckload of 4,000 tonnes or less; or
- (b) a truckload

of **recovered fines** or **blended recovered fines**.

**blended recovered fines** has the same meaning as in clause 1.2.2 of this exemption.

**consignor** has the same meaning as in Part 4 of the **POEO Waste Regulation**.

**construction and demolition waste** means waste that is generated from construction and demolition works.

**earthworks** means filling to achieve the required topography.

**environment protection licence** has the same meaning as in the **POEO Act**.

**EP&A Act** means *Environmental Planning and Assessment Act 1979*

**NATA** means the National Association of Testing Authorities, Australia.

**occupier** has the same meaning as in the **POEO Act**.

**POEO Act** means the *Protection of the Environment Operations Act 1997*.

**POEO Waste Regulation** means the *Protection of the Environment Operations (Waste) Regulation 2014*.

**premises** has the same meaning as in the **POEO Act**.

**receiver** has the same meaning as in Part 4 of the **POEO Waste Regulation**.

**recovered fines** has the same meaning as in clause 1.2.1 of this exemption.

**resource recovery order** means an order made by the EPA under clause 93 of the **POEO Waste Regulation**, imposing requirements on persons in relation to the supply of **recovered fines** and **blended recovered fines** to which this exemption applies.

**resource recovery waste** has the same meaning as in clause 93(1) of the **POEO Waste Regulation**.

**statement of compliance** is the document that includes the **supplier's** name (and A.C.N if a corporation), address and contact details, unique batch identifier for the **batch of waste**, and a statement certifying that the **recovered fines** or **blended recovered fines** meets the requirements of *The recovered fines order March 2022*.

**supplier** has the same meaning as in *The recovered fines order March 2022*.

**transporter** has the same meaning as in Part 4 of the **POEO Waste Regulation**.

**virgin excavated natural material** has the same meaning as in Schedule 1 to the **POEO Act**.

8.2 In this exemption, except where the contrary intention is expressed, another grammatical form of a defined word or expression has a corresponding meaning.

8.3 In this order, words and expressions have the same meaning as in the **POEO Act** unless otherwise specified.

**9. POWER UNDER WHICH THIS INSTRUMENT IS MADE**

9.1 This instrument is made under clauses 91 and 92 of the **POEO Waste Regulation**.

[title of sub-delegate holder]  
**Environment Protection Authority**  
**(by sub-delegation)**