



The recovered soil 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 soil** and **blended recovered soil**.

The current version of this exemption is available on 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 7 (below).

What this exemption does and does not do

This notice exempts persons who apply **recovered soil** and **blended recovered soil** 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 soil** and **blended recovered soil**, while the corresponding **resource recovery order** is concerned with those that supply the **recovered soil** and **blended recovered soil**.

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 soil** and **blended recovered soil** 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 soil** and **blended recovered soil** 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 soil** and **blended recovered soil** 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 soil** and **blended recovered soil** 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 soil** and **blended recovered soil**. 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 soil** and **blended recovered soil** can provide you with a **statement of compliance** for the first supply of each **batch of waste** to you certifying that the **recovered soil** and **blended recovered soil** complies with each relevant **resource recovery order**.
- request that the **supplier** provide you with the test results from all the sampling of the **resource recovery waste** or **recovered soil** 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 soil** or **blended recovered soil** in the corresponding **resource recovery order**; or
- the **supplier** of the **recovered soil** and **blended recovered soil** 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 soil** or **blended recovered soil** 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 soil exemption March 2022

1. WASTE TO WHICH THIS EXEMPTION APPLIES

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

1.2 In this exemption:

1.2.1 **recovered soil** means excavated soil (including but not limited to natural materials such as sandstone, shale and clay) that:

- (a) has been mechanically sieved or screened to remove **physical contaminants** and **construction and demolition waste**;
- (b) contain at least 98% (by weight) natural material after the process in paragraph (a) has been carried out; and
- (c) does not include **acid sulfate soils**.

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

- (a) **virgin excavated natural material**;
- (b) compost as defined in *The compost order 2016* and *The compost exemption 2016*;
- (c) pasteurised garden organics as defined in *The pasteurised garden organics order 2016* and *The pasteurised garden organics exemption 2016*; and
- (d) mulch as defined in *The mulch order 2016* and *The mulch exemption 2016*.

2. ACTIVITIES TO WHICH THIS EXEMPTION APPLIES

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

2.2 **Recovered soil** must only be **applied to land** as **engineering fill** or for use in **earthworks**.

2.3 **Blended recovered soil** must only be **applied to land**:

2.2.1 as a **soil conditioner**; or

2.2.2 where the **blended recovered soil** is comprised of **recovered soil** that is blended only with **virgin excavated natural material** – as **engineering fill** or 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 soil** or **blended recovered soil** for the uses described in clause 2.2 and 2.3 is exempt from complying with the following provisions of the **POEO Act** and the **POEO Waste Regulation** in respect of that **recovered soil** or **blended recovered soil**:

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 soil** or **blended recovered soil** 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 soil** or **blended recovered soil**, that person must comply with all the conditions of this exemption relating to:
 - 3.5.1 that **recovered soil** or **blended recovered soil**; 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 soil** or **blended recovered soil** 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 soil** or **blended recovered soil** 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 clauses 2.2 to 2.3; and
 - 5.1.2 on or before the first supply of the **batch of waste** of the **recovered soil** or **blended recovered soil** 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 soil** or **blended recovered soil** must meet the requirements of *The recovered soil 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 soil 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 soil** or **blended recovered soil** must not contain **asbestos**.

5.2.4 The **recovered soil** or **blended recovered soil** 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 soil** or **blended recovered soil** and the date each **batch of waste** was received;
- (b) the name and contact details of each person that transported the **recovered soil** or **blended recovered soil** 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 soil** or **blended recovered soil** was received at;
- (d) the amount of **recovered soil** or **blended recovered soil** 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 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. DEFINITIONS

7.1 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⁺/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 to 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 soil** or **blended recovered soil**.

blended recovered soil 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.

engineering fill means material that is required to support structures or associated pavements, or for which engineering properties are to be controlled.

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 soil 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 soil** and **blended recovered soil** to which this exemption applies.

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

soil conditioner means a material which measurably improves specific soil physical characteristics or physical processes for a given use or as a plant growth medium.

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 soil** or **blended recovered soil** meets the requirements of *The recovered soil order March 2022*.

supplier has the same meaning as in *The recovered soil 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**.

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

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

8. POWER UNDER WHICH THIS INSTRUMENT IS MADE

8.1 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)