

LANDFILL WASTE LEVY EXEMPTIONS FOR OPERATIONAL USE

RECOMMENDED NATIONAL APPROACH (for discussion)

Foundation

It is preferable to productively use material that would otherwise be buried in landfills. Therefore, waste that meets relevant standards for various landfilling activities should be eligible for exemption from a levy in all States and Territories. Eligibility should be independent of whether a gate fee applies.

Asbestos and asbestos containing material are a public health risk and where properly managed under respective regulatory frameworks, should be automatically exempt from a levy (that is, it cannot simply be claimed that material 'contains asbestos' in order to be exempt). This will discourage illegal dumping or inappropriate stockpiling of this material.

Exemptions

There are two (2) acceptable options for granting levy exemptions. In order of preference, they are:

1. The South Australian model which includes an *Approved Operational Use Standard*:

This standard applies to "waste or other matter". Waste that is suitable for use, and is used, for approved purposes will be automatically exempt. Actual usage etc will be subject to monthly reporting and periodic audit. Waste that can be used for purposes other than those included in the Standard may also be exempt subject to approval on a case-by-case basis. Records would still be kept proving how, where and when material was used. This approach minimises the administrative burden for both the regulator and the operator but maintains accountability.

2. Exemptions based on annual work plans and associated estimates of quantities:

Exemptions should be specified on a whole-of-site operations basis rather than at a lower project or activity level, such as x tonnes of y particle size gravel per annum and so on. Actual usage will be reported monthly and subject to periodic audit. Quantities can be varied, subject to approval, if estimates prove to be incorrect. Unused approved material can be carried forward for future use and will still be fully accounted for. This provides a relatively flexible approach where material can be reallocated between activities if needed. Again, records would still be kept proving how, where and when material was used. This approach keeps the administrative burden to a manageable level for all parties and maintains accountability.

It has been suggested that any material accepted free of charge should be exempt from a levy. This is a broad criterion and would need to be defined and considered in the context that landfill space is the primary asset of all landfill owners and operators, resulting in material only being accepted free of charge if it can be of use. Although it is unlikely that regulators would accept such a criterion, it is worthy of discussion.



Another suggestion is that a levy should only apply to material that is disposed of rather than delivered. This is also a broad criterion that is unlikely to be accepted by regulators. However, it is also worthy of discussion.

Other

It is recommended that New South Wales reviews its definition of waste to bring it into line with other states.

It is also recommended that daily cover be included in any definitions of operational use, rather than relying on percentages that do not necessarily reflect reality.

BACKGROUND

The purpose of this paper is to summarise landfill levy exemptions available in each state for waste used for operational purposes, and to arrive at a view of what constitutes best or preferred practice. Neither the Australian Capital Territory nor the Northern Territory have a waste levy.

It is widely agreed that the volume of waste buried in landfill needs to be minimised as much as possible. Therefore, it should be accepted that using waste in landfill operations is a desirable practice, noting that waste used in landfill operations must satisfy the same standards as virgin material such as particle size, permeability etc.

WHAT CONSTITUTES LEVIABLE WASTE

Other than New South Wales, all states have similar definitions of waste which can be summarised as matter that is unwanted at its source, regardless of whether it has any use or value. New South Wales focusses on whether substances can be applied to the land. This definition is far broader because it encompasses materials purchased new. In other words, operational use exemptions in NSW must follow the same approval path regardless of whether the material is a waste or new product.

WHAT IS OPERATIONAL USE

Operational use for these purposes includes construction (internal haul roads, landfill cells, leachate systems, stormwater management systems and final capping) as well as daily cover, interim cover and material used in other day to day activities. In practice operational use also includes daily cover, but this is separately dealt with and most often is provided for, if at all, as a percentage of leviabile waste.

POSSIBLE EXEMPTIONS - WASTE FOR OPERATIONAL USE

Western Australia

Regulation 5 of the *Waste and Resource Recovery Levy Regulations 2008* deals with exemptions from the levy in Western Australia. Reg 5 (a) exempts waste used to cap a cell when it is completed, provided the waste is accepted at no charge. Reg 5 (g) exempts waste used for construction or maintenance, provided the amount is specified in advance, in a plan prepared by a registered builder or an engineer. This waste must be accepted free of charge. WA allows an exemption equating to 8% of waste received for daily cover.

South Australia

In South Australia, exemptions for the operational use of solid waste are dealt with by regulation 69A of the *Environment Protection Regulations 2009*. The use of solid waste for operational purposes is subject to the levy unless the operational use is approved under reg 69A. Operational use includes construction or maintenance of internal roads, interim cover, final capping, and landscaping/mulching. Quantities are generally based on current landfill practice and individual landfill permit requirements; and extrapolated for 12 months. SA allows an exemption equating to 10% of waste received for daily cover.

Victoria

Victoria does not provide any exemptions or incentives to use waste in landfill operations. Material won on site is exempt as are materials purchased for use in operations. Victoria allows an exemption equating to 15% of waste received for daily cover.

New South Wales

Approval of an exemption from the levy for operational use of certain types and quantities of waste (noting again that in this jurisdiction waste includes all materials purchased new) will be considered in accordance with reg 15 of the *Protection of the Environment Operations (Waste) Regulation [sic] 2014*. The range of purposes for which exemption for non-new material can be applied includes road construction, stormwater management systems, drainage layers, final capping, and bedding layers.

Regulation 15 is very prescriptive and does not take account of the State's *Environmental Guidelines Solid waste landfills* or of various site-specific requirements. For instance, the Regulations allow only 900mm for a compacted clay liner, but the Guidelines require a minimum of 1000mm (note that such clay will normally be purchased and not considered to be waste in other states). Reg 15 includes a table that specifies the kind of waste that could be considered for exemption and the purpose for which each kind of waste can be used.

New South Wales applies a concessional levy rate equating to a 75% discount for recovered fines used as daily cover or a 10% discount for virgin material. Note that the latter is not considered to be waste in any other jurisdiction.

Queensland

Section 28 of Queensland's *Waste Reduction and Recycling Act 2011* currently allows for levy exemptions for waste used in landfill operations, subject to approval. This is under review, with changes taking effect from 1 July 2023. As of 2 November 2022, no information about these changes has been published. They are likely to mainly concern clean earth, which is currently automatically exempt from the levy.

At the time of writing, waste to be used in site operations including building infrastructure, temporary or daily covering, progressive capping, batter construction, final capping, profiling, and site rehabilitation may be levy exempt subject to approval. Approval can be for up to 3 years and quantities may be amended subject to justification. Waste used for daily cover in Queensland can be exempt based on reasonable estimates of quantities.

Tasmania

Tasmania does not provide any exemption or discount for waste used in operations, other than an allowance of 10% of waste received for daily cover.

Summary

Waste cannot be exempted from the levy when used for operational purposes in either Victoria or Tasmania. All other states allow for exemptions for similar uses, subject to approval. Therefore, the main differential between most states becomes the approvals themselves and the processes to obtain them. Most jurisdictions allow for daily cover based on a percentage of waste received. These

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percentages do not necessarily reflect actual quantities. Again, it should be noted that in NSW new material, including man-made cell liners etc., is classified as waste.

APPROVALS

Western Australia

To be considered for exemption, waste for operational use must be accepted free of charge. No other states have this prerequisite. Waste used for final capping does not require documentation to support an approval for exemption provided its use complies with licence conditions. Applications are made on a financial year basis and one application can cover multiple operational purposes. Applications must be supported by plans and estimates prepared by a registered builder or an engineer. In practice, once a site receives a Licence Amendment or Works Approval based on the plans and estimates, there is no need for a separate application for exemption.

Waste levy returns are submitted quarterly. Audits occur on a random basis but are generally annual and may be more frequent for sites with a history of poor record keeping. Variations to materials and quantities can be applied for if needed.

South Australia

An *Approved Operational Use Standard* is being developed. Once this is in place, approvals will no longer be necessary for items included in it. A work plan and estimates of quantities of material are currently required to support operational use exemptions. These plans and estimates included waste and other matter. Exemptions are generally site specific rather than project or task based. Once the *Approved Operational Use Standard* applies, this requirement will continue for material not included in the *Standard*. Approvals cover a twelve-month period. The form and timing of applications has not yet been formalised and this would be welcome. Approvals can take up to eight weeks for more complex applications, but same day approval is possible for emergencies. Sites are required to submit monthly mass balance reports which are used as a basis for calculating levy liability as well as to track waste used for operational purposes. These reports are subject to audit, however the linkages between the reports and the volumes exempt for operational purposes require clarification. Unused quantities can be carried forward. Requests for increased quantities will generally be fast tracked.

Victoria

Victoria does not provide levy exemptions for waste used in operations.

New South Wales

As noted previously, NSW defines waste so broadly that it includes virgin material, man-made cell liners etc. This makes the approvals documentation far more voluminous and onerous than it would otherwise be. NSW also limits the levy exempt quantities of some material to less than what is required under its own *Environmental Guidelines for Solid waste landfills*.

Applications are normally valid for a twelve-month period and cover individual projects rather than the entire landfill operation. They must be supported by a plan for use of the material plus any other information that may be required. The EPA issues certificates or Deduction Identification Numbers

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(DINs) specifying the site, purpose, and quantity. Applications are usually processed within approximately four weeks.

One project will have multiple DINs if it has multiple materials e.g., clay, aggregate etc. This makes record keeping difficult because one type of material may be delivered for multiple projects. Waste Contribution Monthly Reports are required. These are subject to audit. An increase in quantities can be applied for subject to both a detailed justification and the limit in quantities imposed by regulation.

Queensland

Applications and approvals for exemption of waste used for operational purposes can apply for up to three years. One approval can also cover multiple operational purposes and materials. Applications must include justification for the types and quantities of material for each operational purpose. Applications covering the three-year period can take approximately three (3) months to approve. Having to specify each purpose prohibits use for minor unforeseen ad hoc activities such as filling in potholes, mulching etc.

A report must be submitted each November detailing operational uses for the previous twelve months. The report must include what material was used for which purpose, quantities, and where on site. These reports are audited annually. Applications can be made to vary existing approvals, including increasing quantities as well as adding new material. Variations should be approved within 30 days; however, the clock returns to day one if more information is requested.

Tasmania

Tasmania does not provide levy exemptions for waste used in operations.

Summary

Victoria and Tasmania do not allow exemptions from the levy for waste used in operations. WA is the only state that requires waste to be accepted free of charge before it can be considered for exemption from the levy. Approvals for exemption are normally for twelve months, other than Queensland which can be for up to three years.

NSW approvals are very detailed and unwieldy, with approvals detailed and audited down to quantities of each type of material for each individual activity within a project such as a gravel protection layer for cell number # as well as a gravel drainage layer for cell number # and so on. Other relevant states focus approvals on total site operations for the period. The exception here is Queensland which, although issuing approvals for total site operations, details quantities and activities to a low level. This is a significant administrative burden and deters use for ad hoc purposes such as mulching and minor pothole maintenance.

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