



## Fact sheet

### Waste levy exemption 5(1)(i) - Asbestos containing material

#### Overview

The *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) provide for a levy to be paid for waste (waste levy) received at licensed landfills in the metropolitan region and waste collected within the Perth metropolitan region that is received at licensed landfills outside of the metropolitan region.

Regulation 5 of the WARR Levy Regulations outlines categories of exemptions where the waste levy will not apply to waste received at licensed landfills if an application for an exemption is granted.

Regulation 5(1)(i) allows licensees landfills to claim, by application, an exemption for asbestos containing material (ACM) disposed of at the landfill.

#### Exemption for asbestos containing material

The exemption only applies in the following circumstances:

- ACM must be transported to the licensed landfill in accordance with regulation 44 of the *Environmental Protection (Controlled Waste) Regulations 2004* (Controlled Waste Regulations)
- ACM must be buried at the landfill in compliance with the conditions of the landfill's licence.

To apply for this exemption, the licensee must complete and submit to the Department of Water and Environmental Regulation (the department) the [approved form](#) and provide the information referred to in that form.

#### What is asbestos containing material?

Under regulation 5(1A), ACM is defined as any manufactured material or thing that, as part of its design, contains asbestos.

#### Are all wastes that contain asbestos considered to be asbestos containing material?

No, some types of waste that contain asbestos do not meet the definition of ACM.

ACM are items which contain asbestos as part of their original design. The asbestos has been purposefully included in the item for a specific reason.

Asbestos wastes which are **not** considered ACM are generally materials such as sand, soil or waste which has been contaminated with asbestos. Examples of waste which are **not** considered to be ACM include:

- asbestos contaminated soils
- sand or other waste mixed with asbestos fibres
- mixed loads where the asbestos containing materials could not reasonably be separated from other wastes.

### **What types of wastes are asbestos containing material?**

ACM can generally be divided into two groups: bonded asbestos products and friable asbestos products. Examples from each group are detailed below:

1. bonded asbestos products include roofing, shingles and siding, exterior and interior wall cladding, eaves, fencing, thermal boards and water and flue pipes
2. friable asbestos products include rope door gaskets in wood stoves, loose fill roofing insulation, spray-on insulation or sound proofing, low density asbestos fibre board, insulation on hot water pipes or domestic heaters or stoves (lagging), backing for floor tiles and vinyl flooring, carpet underlay, textured paints or decorative ceiling coatings, heat resistant fabrics, brick and plaster sealants or fillers, adhesive products and damaged or badly weathered bonded asbestos products.

### **Can I seek an exemption for asbestos contaminated waste which is not asbestos containing material?**

No, the exemption under regulation 5(1)(i) is specifically for ACM. The levy is payable on other asbestos contaminated wastes received at the licensed landfill.

### **Regulation 44 of the Controlled Waste Regulations**

The Controlled Waste Regulations regulate the transportation of controlled wastes on roads within Western Australia. Asbestos is a controlled waste and therefore its transportation is subject to strict requirements under the Controlled Waste Regulations. The Controlled Waste Regulations apply to the transportation of all types of asbestos (e.g. ACM, asbestos contaminated soil and mixed loads contaminated with asbestos).

A summary of the requirements under regulation 44 of the Controlled Waste Regulations is provided below. Asbestos that is transported to a landfill must be:

- separated from other material for disposal where that is reasonably practicable
- wrapped or otherwise contained in a manner that prevents asbestos fibres entering the atmosphere during transportation on a road
- labelled or marked with the words 'caution asbestos' in letters not fewer than 50 mm high.

Unless the above requirements are met, the person transporting the material is committing an offence.

The Controlled Waste Regulations can found at the [State Law Publisher](#).

### **Can all landfills accept asbestos containing material?**

No, if your landfill is able to accept asbestos it will be stated on the licence that Special Waste Type 1 is accepted. If your licence does not mention asbestos, then

your landfill does not have permission to accept asbestos. If you are unsure about whether your landfill can accept asbestos, please contact the department.

Some licences may contain specific conditions pertaining to asbestos such as where on the premises it can be buried. To be granted an exemption under regulation 5(1)(i), you will need to ensure that any ACM accepted under the exemption will be buried in accordance with any requirements on your licence.

### **Can I charge a fee to accept this waste?**

The department generally places a condition on exemptions granted under regulation 5(1)(i) requiring that the waste holder is not charged the levy component of any waste acceptance fees for the exempted waste. However, landfilling fees can be charged.

It is in the public interest that ACM is appropriately disposed of and this exemption assists in ensuring the cost of asbestos disposal does not discourage waste holders from disposing of this waste correctly.

### **How do I apply for this exemption?**

The licensee of a landfill can apply to the department for an exemption under regulation 5(1)(i) by completing the approved [application form](#) and submitting to [wastelevy@dwer.wa.gov.au](mailto:wastelevy@dwer.wa.gov.au).

### **When should I apply for this exemption?**

Exemptions under regulation 5(1)(i) are generally issued for a period of 12 months, coinciding with the financial year.

An application should be submitted prior to 30 June of each year. However, retrospective applications (i.e. applications submitted after the levy has become payable or has been paid) will be considered. It is recommended that applications are submitted to the department prior to ACM being received by the landfill to ensure that the material will not be subject to the levy.

### **How is an exemption application assessed?**

The Chief Executive Officer (CEO) of the department, or their delegate, will assess the information provided in the approved form to determine if it meets the requirements of the exemption under the WARR Levy Regulations.

Following this assessment, the CEO will grant or refuse an exemption.

### **Conditions of exemptions**

If an exemption application is approved, the licensee will be issued with an exemption notice. The exemption may be subject to conditions or limited to circumstances set out in the notice.

Exemptions granted under regulation 5(1)(i) for levy return periods starting from 1 July 2021 onwards will generally be subject to a condition requiring that photographic evidence of all loads of ACM accepted for disposal and claimed as exempt is kept and supplied to the department to demonstrate that the landfill is compliant with the conditions of the exemption.

Regulation 5(5A) of the WARR Levy Regulations specifies examples of conditions that may be imposed.

### **What happens if a condition of an exemption is breached?**

Under regulation 5(6) of the WARR Levy Regulations, the exemption ceases to have effect if any condition of an exemption notice is breached.

### **Will I be notified of the outcome of my application?**

If the CEO decides to approve an exemption application, the licensee will receive a written notice of this decision.

If the CEO intends to refuse an exemption application, the licensee will be provided with a draft decision document outlining the reasons why the CEO intends to refuse the application. The licensee will generally have 21 business days to respond to the draft decision document before the CEO makes a final decision.

While the time required to assess an exemption application varies, generally a decision will be made within 30 business days following the receipt of a complete application.

### **Can I appeal an exemption decision?**

If the CEO refuses an exemption application or imposes conditions or limitations that the licensee does not agree with, the licensee may apply to the State Administrative Tribunal (Tribunal) for a review of the decision.

An application for review of the CEO's decision is made to the Tribunal directly. Information about applying to the Tribunal is available [online](#).

### **Do I have to pay the levy while my exemption application is being assessed?**

A licensee must pay the levy by the due date, including any levy payable for waste that is the subject of a pending exemption application.

The due date is 28 days after the end of the relevant return period. If payment is not received in full by the due date, a penalty is payable on the overdue amount calculated at a rate of 20 per cent per annum.

If the exemption is granted retrospectively, the department will refund the licensee the amount of levy overpaid and any penalty paid on that amount. Alternatively, the department may credit the licensee with these amounts, if the licensee so elects.

It is recommended that exemption applications be submitted in accordance with the submission dates outlined in the [Guideline – Waste levy exemptions](#).

### **How long does an exemption last?**

All exemption notices will specify the period for which the exemption is valid. The validity period specified in the exemption notice will vary depending upon the circumstances of the exemption.

An exemption ceases to have effect at the conclusion of the validity period or immediately if an exemption condition is breached.

## **Calculating the amount of exempt waste for each return period**

Following the issue of an exemption notice, licensees will need to calculate the amount of exempt waste for each return period.

### *Category 63 (Class I) landfills*

For licensed landfills in the metropolitan region, the volume of exempt waste must be estimated in the [Approved manner for estimating the volume or weight of waste received at and disposed of to landfills](#) (the approved manner), in accordance with regulation 10(8) of the WARR Levy Regulations.

For licensed landfills outside the metropolitan area that have received waste collected within the metropolitan area, the volume of exempt waste must be estimated in the approved manner in accordance with regulation 12A(2)(b).

### *Category 64 (Class II and III) and 65 (Class IV) landfills*

Under regulation 8, the weight of exempt waste received must be calculated using the landfill's weighbridge, unless the landfill does not have a weighbridge or the licensee has obtained an exemption from the requirement to weigh waste on a weighbridge under regulation 5(2).

If the landfill does not have a weighbridge, or the licensee has been granted an exemption from the requirement to weigh waste on a weighbridge, the weight of exempt waste must be estimated in the approved manner in accordance with regulation 9(2A).

## **More information**

Please contact the department on 6364 6963 for further advice on waste levy exemptions or related matters.

This document is available in alternative formats and other languages on request.

Effective February 2021.

## **Related documents (if applicable)**

Additional publications about waste levy exemptions are available [online](#).

## **Legislation**

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. Please refer to Western Australian Legislation for copies of the relevant legislation, available electronically from the Parliamentary Counsel's Office [website](#).

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### **Legal advice**

The information provided to you by the department in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, the department recommends that you obtain independent legal advice.