

# AUSTRALIAN SUSTAINABLE BUSINESS GROUP'S

Submission on

**Proposed minimum standards for managing  
construction waste in NSW and other  
miscellaneous waste reforms**

December 2017



Sydney, Brisbane

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	ii
RECOMMENDATIONS.....	iii
1        OVERVIEW AND PRIMARY ACTION.....	1
2        PROPOSED REGULATORY CHANGES.....	3
2.1    Proposed Landfill Bans .....	3
2.2    Application of the Waste Levy on Recycling Facilities.....	5
2.3    Other issues .....	7
2.3.1    Mass Balances .....	7
2.3.2    Asbestos waste.....	8
3        CONSTRUCTION RECYCLING STANDARD .....	9
3.1    Consideration of the logistics of C&D recycling.....	9
3.1.1    Weighbridge inspection .....	9
3.1.2    Tip and Spread .....	9
3.2    An alternative by-pass for tip and spread .....	10
3.3    The Inspection Process.....	11
3.3.1    Sorting .....	11
3.3.2    Rejected Loads Register .....	12
3.4    Management of stockpiles .....	12
4        CONCLUSION .....	14

## EXECUTIVE SUMMARY

The Australian Sustainable Business Group (ASBG) is pleased to comment on the [Proposed minimum standards for managing construction waste in NSW and other miscellaneous waste reforms](#) relates two main documents:

- [Protection of the Environment Operations Legislation Amendment \(Waste\) Regulation 2017](#) (Waste Regulation)
- [Standards for managing construction waste in NSW](#) (the Standard)

Dealing with the regulatory changes first, there is a mix of some good and some unnecessarily tightening of the regulatory controls especially on landfills, but also significant increases in the EPA's power over the issuing of waste levy deductions and rebates. The dual bans, with exemptions, for the exhumation and transport of waste from landfills are considered harsh measures to deal with actions by a small number in the market. If implemented as is they will undermine many good resource recovery operations from landfills. ASBG recommends the exhumation requirement permit removal from a landfill disposal area for up to 5 days. The ban on transport is considered unnecessary and redundant considering the other powers the EPA possesses and proposes, hence should be omitted.

EPA proposal that it will only issue deductions and rebates on the waste levy provided it is *satisfied* with the estimation process breaches common dispute settlement processes that are used with taxation laws across Australia. More certainty is required in this area, so ASBG recommends a protocol be drafted instead of the EPA having virtually the last word on who gets the rebate or not. There are fundamental concerns over this proposed *satisfaction* power that would make the EPA the most powerful tax collector in this country. This power also extends to the calculation of mass balances where the EPA can choose to *believe* a calculation is correct or not. Again there is great concern over the granting of such powers. ASBG recommended that a mass balance protocol be made publically available and used to deal with disputes over the significant error prone method. ASBG has long supported an alternative to the mass balance approach. One that uses a levy rebate based on the amount of recycled product sold.

The C&D Recycling Standard appears a tightening of the 2014 protocol, which at the time ASBG in its submission said it was unworkable. This fact still remains. Clearly a new approach is required where EPA and the C&D recycling sector develop out a workable methodology. One significant area where the Standard will not work is where large volumes — e.g. 400 loads per day— from a large construction project generates a log jam as each load under the standard must be tipped, spread and checked for asbestos, which if found the entire load must be reloaded and sent to landfill. As each spreading area must be >100m<sup>2</sup> and could process 4 loads per hour one can see how a jog jam will occur. Few C&D recycling sites have the free land area to locate a handful of tipping area. ASBG proposes one practical solution in having loads pre-assessed at the generators site. If properly managed and loads tracked, such loads can by-pass the mandatory tip and spread check, permitting the facility to undertake its own checking measures as they feel fit.

There are a number of other issues with the Standard discussed such as:

- Loads that meet Resource Recovery Orders (RRO) can by-pass the checking, is welcomed, but this means that such loads would also in general by-pass C&D recycling facilities as they are permitted to be placed onto land. The Standard, being so tight on C&D recyclers will move the loophole of poor checking to the generator sites controlled by reliance that the RRO has been met with no similar inspection processes under the Standard.
- Replacement of the generators address with the drivers' licence details.
- The management of asbestos finds in stockpiles, which had a isolate and separate method in the 2014 Protocol now absent.

## RECOMMENDATIONS

Recommendation 1 Changing the meaning of exhumation from the land to “does not commence until after 5 days from the waste’s burial.” .....	3
Recommendation 2 Section 110B be omitted as it will negatively impact the operational flexibilities of landfills unnecessarily, driving up costs. ....	4
Recommendation 3 Landfills provide the EPA staff with tours and education on the day to day operations of a landfill and associated activities such as resource recovery.....	4
Recommendation 4: The legal burden of proof remove “if the EPA is satisfied” and replace it with a protocol that reflects similar taxation dispute burden of proof requirements across Australia. ....	7
Recommendation 5 The use of the mass-balance method be reconsidered to a product sold / accepted method to determine levy discounts and rebates. If a mass balance is to remain use of the term “if the EPA reasonably believes” should be omitted and replaced with a reference to a protocol for determining the outcomes of a mass balance, its application and treatment of errors be prepared with waste sector consultation. ....	8
Recommendation 6 The EPA clarify how it will apply this new clause and for example detail what it expects a landfill operator to do to avoid prosecution under this section.....	8
Recommendation 7 A more flexible and pragmatic approach to assessment of loads at C&D recycling centres be developed with consultation with the sector.....	10
Recommendation 8 The EPA introduce a by-pass process for the tip and spread check if the C&D waste material has been pre-checked at the point of generation and subject to documented checking and tracking process at the C&D recycling facility.....	11
Recommendation 9 ..The phrase in s2.1 ‘This load of waste must be immediately transferred to the appropriate waste storage area referred to in Standard 4’. be replaced with ‘This load of waste can be transferred to the appropriate waste storage area referred to in Standard 4 subject to additional inspection by the facility.’ .....	12
Recommendation 9 The EPA remove item 3 from the Rejected Loads Register.....	12
Recommendation 10 That an ‘asbestos finds’ procedure be reinstalled in the Standard to provide some practical certainty on the management of these finds.....	13

## 1 OVERVIEW AND PRIMARY ACTION

The Australian Sustainable Business Group (ASBG) is pleased to comment on the [Proposed minimum standards for managing construction waste in NSW and other miscellaneous waste reforms](#), which relates two main documents:

- [Protection of the Environment Operations Legislation Amendment \(Waste\) Regulation 2017](#) (Waste Regulation)
- [Standards for managing construction waste in NSW](#) (the Standard)

ASBG notes there is the covering [Reforms to the Construction Waste Recycling Sector](#), but the main issues lie the documents above.

The [Australian Sustainable Business Group](#) (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 120 members comprising of Australia's largest businesses and manufacturing companies.

Overall there is somewhat of a breakdown of communications and trust between the waste sector and the Environmental Protection Authority (EPA). A few within the waste sector are purposely undertaking criminal activities. Waste criminality is largely a result of illegal evasion the waste levy in NSW. The EPA's submission to the NSW's Parliament Energy from Waste Inquiry stated there is "*a persistent criminal element in the waste industry that is both agile and difficult to neutralise.*" As a consequence, the EPA told the Inquiry that it is developing a waste crime taskforce of 10 or 11 members largely ex-police with investigative experience.

Requirement for the need of such a taskforce is not surprising as whenever there is a levy or tax imposed at a boarder area or product by any government, the profit from crime incentive will arise. The waste levy in its creeping increases over the last 25 years has made this criminal activity increasingly profitable. Lacking was, until recently announced, a special police force to uphold this law. However, there are many elements within the proposed regulatory changes that indicate a focus on the group of waste criminals at least in the darker end of a various shades of grey. While the task force is welcomed there is concern they will tend also focus on the easier end and ignore the hardened criminal end of the sector focusing on those trying to comply. Establishing the Waste Taskforce is a step in the right direction, but the whole waste sector should not be punished for a minority dragging the sector down.

The issue here is an understanding that the EPA desires to clamp down on the waste criminals, but some of the regulatory changes are considered unnecessarily harsh. EPA should note that the majority of the waste sector wishes to comply and endeavours to do so. However, the high costs and near unchallengeable controls the EPA is seeking, especially on capturing levy payments indicates a hostile policing process is being embarked upon.

Such ongoing and *ad hoc* regulatory changes have resulted in a regulatory lottery for the waste sector, where there are winners and losers. In this package of changes the clear intent is to increase levy collections, while also introducing measure that make it more difficult for resource recovery. It seems revenue collection and environmental protection dominates with resource recovery and recycling being very much a secondary issues. Proposed changes appear to contradict the objectives of the [Waste Avoidance and Resource Recovery Act 2001 section 3](#):

- (b) to ensure that resource management options are considered against a hierarchy of the following order:
- (i) avoidance of unnecessary resource consumption,
  - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery),
  - (iii) disposal,
- (d) to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste,

Nowhere in NSW environmental laws says that the waste levy revenue collection should be a priority over resource recovery. However, the liabilities the proposed changes introduce will damage resource recovery by creating uncertainty and such broad levy deduction and rebate rejection powers that such business risks that accompany are not worth pursuing. Essentially the increase in powers, while understood in intent has gone too far. As a result fairer methods are called for.

Despite the issues of concern there are some positive measures in the package such as the ability to claim bio-filters as a levy reduction for landfills is a practical measure. Also the use of recovered fines for daily cover with a 50% levy reduction is also welcome, though both need a little clarification.

For Construction and Demolition (C&D) recycling the Standards pose the ongoing issues including:

- The impact of logistics for C&D sites which could not have the capacity to screen every load during a major construction project
- Use of hard stands is costly, areas can change due to operational issues and can be contaminated
- Some of the inspection and other administrative requirements are very difficult to manage or implement.

Asbestos waste having no scientific or practical limit poses considerable uncertainty and problems for the C&D sector. It is remarkable than only asbestos contamination causes the rejection of a load whereas any other unacceptable material can be source separated at the site.

## 2 PROPOSED REGULATORY CHANGES

There are three main areas of concern within the proposed Waste Regulation:

- Proposed bans, with exception on exhumation and transport from landfills,
- Clarifying how the waste contributions are applied at resource recovery facilities
- Other issues

### 2.1 Proposed Landfill Bans

**Section 110A** proposes to ban the exhumation of waste from a landfill site's land. ASBG understands there have been arbitrages used under the existing legislation where such waste, if recycled can claim a rebate from the waste levy. Sometimes the levy paid when first buried was far lower than the current levy rate, hence the arbitrage is made when the current levy rate is claimed as a rebate. ASBG acknowledges there is a provision that it can be exhumed with a direction of the EPA or as authorised by law, such as a planning permission. Such exemptions permit future landfill mining, but the issue of rebates on the landfill levy on such mining appears a complex topic and different to the issues being addressed at this stage.

The problem is that virtually all landfills exhume recyclables from their tip faces. Less common is stopping a truck load of recyclables just before it tips at the landfill face. Many of these recovered materials are of high grade recyclate and are source separated for largely off-site transport. As this practice is common, the exhumation ban would result in a log jam of application for exemption. If the EPA cannot cope with this potential administrative work, a significant amount of material currently recycled will be landfilled. This is against the Waste and Resource Recovery Strategy which is looking to lift recycling rate further. While a list of permitted materials to be exhumed can be created it will be limited to known resource recovery types. This means new fledgling recycling types will be subject to a complex assessment lengthy and costly process, generally killing off many in their infancy.

A way of avoiding the exhumation ban impacting on common and *bona fide* recycling practice is to simply define that waste is not exhumed if it was buried in the landfill for less than 5 days. Note that some landfill receiving waste late in a day or are only open a limited number of days a week, could continue to do simple waste face source separation within the 5 day period. Noting it is common to remove the daily cover materials for their reuse and to gain access to the tip face for resource recovery the next day or two or more. It should be obvious if the waste was buried for more than 5 days. This permits a reasonable time for a landfill operator to source separate and recycle materials without falling foul of the exhumation of waste only by permission. Note the intention is not seek hard line exceedances of the 5 days, but limit extractions to very recent events and prevent broader scale exhumation of older materials.

**Recommendation 1** *Changing the meaning of exhumation from the land to "does not commence until after 5 days from the waste's burial."*

**Section 110B** bans the transport of waste from a landfill facility. While there are exemptions these are considered too limiting or require the landfill to apply for an EPA direction. There are numerous issues this raises including:

- Preventing the *bona fide* recovery and recycling of unlisted materials destined for further processing or recovery, except with permission. As with exhumation, gaining permission is a resource intensive process for both the operator and the EPA. A log jam of applications will follow, resulting in a large backlog of applications and damaging the amount of *bona fide* recycling being undertaken.

- Complicating the management of landfills where most have resource recovery operations. How will the landfills and resource recovery operations be ring fenced effectively? Considering their close proximity how will this be policed where landfill and recycling occur side by side? With most landfills having resource recovery, this will be another loophole.
- Preventing operational management practices of landfills where movement between facilities is more efficient for the operator. Landfill operators often transport wastes and recyclables between local facilities for operational purposes. Perhaps a landfill has a flooded cell or an nearby landfill has operational cost advantages. Landfills also need to manage their airspace effectively. Consequently, there are circumstances where a transport ban would increase environmental risk by forcing a landfill to accept wastes when there is a better landfill option nearby that achieved a higher environmental outcome. However, this transport ban would prevent all transport of waste from a landfill.

Like the exhumation ban the transport ban has been proposed to limit bad and unwanted practices used by some landfill operators to circumvent the intent of the waste legislation in NSW. Closing loopholes is a practice which should take into account the impact that they have on the vast majority of operators. Consequently, careful drafting of regulation is required to ensure those trying to comply with the intent of the laws are not punished as well.

The EPA appears to be using the transport ban to prevent landfills as a de facto transfer station for long haul transport to Queensland. ASBG notes this currently legal provided it does not exceed the POEO Act Schedule 1 thresholds, but this threshold applies to any site waste facility or not. So prevention at the landfill will simply promote other temporary sites springing up and directly transporting to Queensland. If these restrictions are placed on landfills then their gate prices will need to further increase. This will simply add to the long haul waste problem where generators of waste will simply bypass landfills and send the waste directly. Such action prevents local landfills in NSW from resource recovery which is currently conducted, as more wastes will be diverted to facilities outside NSW EPA's jurisdiction.

**Recommendation 2** *Section 110B be omitted as it will negatively impact the operational flexibilities of landfills unnecessarily, driving up costs.*

ASBG members are concerned there is intent in s110B that preventing any waste leaving a landfill once it has been delivered is a good thing. This approach misunderstands the way in which landfills operate. Improved education on the operational issues for landfills by EPA staff would assist in understanding the issues involved.

**Recommendation 3** *Landfills provide the EPA staff with tours and education on the day to day operations of a landfill and associated activities such as resource recovery.*

Both s110A and 110B are in part covered under proposed Clause 16(3):

- (3) *A deduction is not available under this clause in respect of waste transported from a scheduled waste disposal facility unless the occupier of the facility satisfies the EPA of any one or more of the following:*
  - (a) *the waste was transported in an emergency to protect human health or the environment,*
  - (b) *the waste consists only of metals and was transported for further processing or recovery, ...*

This clause supports and contradicts the intent of both s110A and B. It supports the intent of a transport ban on wastes from a landfill by restricting the payment of a deduction to wastes *transported for further processing or recovery*. It contradicts s110A and B as no deduction appears payable for wastes that are transported with a direction of the EPA.

ASBG landfill members consider that landfills should continue to determine what waste is landfilled either at their premises or elsewhere. Without recognition of legitimate inter landfill exchange and provision of levy rebates on such, where the levy applies only at the disposal point, the cost and liabilities of landfills and resource recovery operations will increase with many considering withdrawing from the market due to the liabilities and ad hoc nature of changing waste legislation with its future uncertainties.

## 2.2 Application of the Waste Levy on Recycling Facilities

There are a number of occurrences where the waste deductions must *satisfy the EPA* or where *the EPA reasonably believes* they met the regulation's criteria. These occur under:

- s16(3)  
*A deduction is not available under this clause in respect of waste transported from a scheduled waste disposal facility unless the occupier of the facility satisfies the EPA of any one or more of the following:....*
- 16(4)  
*A deduction is not available under this clause unless the person claiming the deduction satisfies the EPA, using such records as the EPA may require, of the matters set out in subclause (1) (a), (b) or (c)....*
- S25(1) **EPA may estimate changes to mass of waste**  
*This clause applies if the EPA reasonably believes that the mass of waste may have changed while it is at a scheduled waste facility or the occupier of the facility has incorrectly calculated the mass of waste at a facility.*
- S25B **Rebate of contribution**  
*The EPA may pay a rebate to the occupier of a scheduled waste facility that is not a scheduled waste disposal facility of an amount equivalent to any contribution under section 88 of the Act in respect of waste if the EPA is satisfied that the waste has been transported from the scheduled waste facility for recovery, recycling, processing or disposal to another facility that may lawfully be used as a waste facility and that the waste was received for lawful recovery, recycling, processing or disposal.*

ASBG has been advised the requirement that *satisfies the EPA* or where *the EPA reasonably believes* by-passes the balance of probabilities that applies to the legal burden of proof in such civil matters. This well beyond the common burden of proof approaches used in settling civil and in most cases taxation actions. ASBG opposes this change to the legal burden of proof for levy deductions and rebates.

Placing this burden of proof on the waste facility is a considerable challenging and one of concern as it applies to all waste facilities claiming a deduction or a rebate from the waste levy.

ASBG is concerned with these powers the EPA could reject any rebate or deduction from any waste facility if it so desired. The requirements under s16(1) requires the waste was transported or received for lawful use, recovery, recycling or processing. As under s81 of POEO (Waste) Regulation states:

*A person must not cause or permit asbestos waste in any form to be re-used or recycled.*

Add to this the definition of asbestos waste is : *any waste that contains asbestos*. Considering that Safework Australia states<sup>1</sup>:

*The typical environmental background in outdoor air is 0.0005 fibres/ml and 0.0002 fibres/ml in indoor air<sup>2</sup>. The daily inhalation volume for an average adult is 22 m<sup>3</sup> or 22,000 litres<sup>3</sup>. This means 5,500 fibres are breathed/day by the average person.*

Hence, asbestos fibers are ubiquitous in outdoor air. EPA has also required additional measurements beyond the requirements of AS4964 Method for the qualitative identification of asbestos in bulk samples. AS4964 has a 0.01% reporting limit, but EPA wrote to NSW laboratories who test for asbestos and said:

*If asbestos is found, but is below the reporting limit, it is the EPA's position that the laboratory must still report the presence of asbestos → the waste must be classified Special waste asbestos.*

As a consequence, any waste material can contain asbestos fibers. If any fibers are detected then that waste must be classified as asbestos waste. However, asbestos waste is banned from being re-used or recycled. As any detection of asbestos fibers can classify a waste or a recycled product as *asbestos waste* basically virtually all recycled products could be classified as asbestos waste. Proof that a waste is not *asbestos waste* is very difficult due to the presence of asbestos fibers outdoors and the strong likelihood of contamination of any waste by them. As sending asbestos waste to recovery, recycling or processing is unlawful, the EPA can claim that virtually any recycled product or other materials sent from any waste facility is assumed to be *asbestos waste*. Or EPA can be unsatisfied with virtually any claim from a waste facility or resource recovery facility for a levy rebate. Imagine having to prove there was no asbestos in the final product in every load sold. An almost impossible task. With the burden of proof being based on the waste facility that it met *satisfaction of the EPA*, the EPA can pick and choose who and when and refuse any levy rebates or deductions.

This perverse issue regarding what is asbestos waste results from the non-scientific approach to asbestos in waste. All other contaminant have concentration limits, based on risk assessments. Even radioactive waste has detailed concentrations, based on risk assessment. But asbestos is different where it appears the EPA is afraid to treat it in a risk based framework, preferring to deal with it in a subjective manner, due to the emotional outrage it has generator. As a consequence, perverse outcome result as discussed above as well as poorer health and safety outcomes due to either excessive handling or over management of wastes contaminated with it.

Under s16 (5) the EPA can call for an audit from a waste facility in regard to its claims for deductions and or rebates. This process alone should be adequate with an appropriate protocol or changes to the waste levy Protocol, to assess what are and are not reasonable deductions and rebate claims.

ASBG understands the EPA wishes additional powers to control the darker elements of the waste sector. However, the liabilities and business uncertainties associated with these changes without any qualification could make many leave the recycling and resource recovery sector. Such overwhelming financial power is also an attractive to corrupt activities. Just the threat of not being satisfied over millions of dollars of levy rebates can lead to the potential for bribery and blackmail. The point is good legislation should minimise the potential for corrupt behaviour, not enhance it. In saying this ASBG is

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<sup>1</sup> Asbestos, Baseline Health Monitoring Before Starting Safework Australia Asbestos s11 : <https://www.safeworkaustralia.gov.au/system/files/documents/1702/asbestos.docx>

not claiming EPA is in any way corrupt or operating in an unprofessional manner, but calling for the incentives for corrupt behaviour to be minimised at the legislative level.

The outcome needed is one of balance where there is a fair process to settle levy disputes. This should be along the lines of other taxation laws, which are based on the balance of probabilities as the legal burden of proof. However, current practices could be strengthened with requirements of evidence in meeting certain criteria such as receipts from sales etc.

ASBG also considers that the EPA's role should be end once a saleable product from a waste has been made. There are many other controlling agencies on product safety and liability that come into play as well as commercial law. As a consequence, once a recycled product has been sold these processes should dominate. Hence, once a product has been sold from a resource recovery facility, proof of sale, without rejection should be enough for the EPA to provide a deduction or rebate.

***Recommendation 4:** The legal burden of proof remove "if the EPA is satisfied" and replace it with a protocol that reflects similar taxation dispute burden of proof requirements across Australia.*

ASBG also considers that disputes on such product from recycling are to be subject to existing product and consumer laws and the EPA should minimise its role in this area.

## 2.3 Other issues

### 2.3.1 Mass Balances

Under s25A **EPA May Estimate Changes to Mass of Waste**, brings up the issues that the EPA and waste facilities face when undertaking a mass balance. Mass balances are notoriously error prone and with waste materials will vary according to a number of difficult to measure issues such as:

- Moisture changes – when it is a wet mass will increase, when dry it will decrease
- Biological actions – micro organisms can covert waste in to gases and cell mass
- Chemical changes — Self heating reactions such as that occurs in compost or simple rust can increase or decrease the mass

All of the above can affect the mass balance of waste facility with most as predictable as the weather. ASBG has in the past recommended that the mass balance process be abandoned and replaced by a formula that is based on the amount of recycled or re-used product sold. Here the purchaser, protected by product laws, polices the quality of the product and removes the difficulty for the EPA in determining the efficacy of a mass balance process to demonstrate that waste has gone missing from its levy payments.

If the mass balance process is to remain then in s25B use of the term '*if the EPA reasonably believes*' is another example of excess power the EPA to the legal burden of proof. As a consequence it should be omitted. ASBG considers in its place the EPA to provide a detailed protocol on how it requires a mass balance to be prepared and the errors that it tolerates as well as where it will step in to determine the error rates. If there is a dispute this should be subject to the recommendation R4 in this submission.

### ***Recommendation 5***

*The use of the mass-balance method be reconsidered to a product sold / accepted method to determine levy discounts and rebates.*

*If a mass balance is to remain use of the term “if the EPA reasonably believes” should be omitted and replaced with a reference to a protocol for determining the outcomes of a mass balance, its application and treatment of errors be prepared with waste sector consultation.*

#### **2.3.2 Asbestos waste**

Clause 80 Disposal of Asbestos Waste makes it a joint and several liability of dust is generated from unloading of asbestos waste at a landfill site. This is welcomed as currently the landfill operator bears the guilty. However in practice the landfill is one of the two or more parties involved in such dust generation when it occurs. However, there is still concern on how the allocation of blame will apply for either the landfill operator or the person unload or disposing of the waste. If it is the fault of the generator then how will this be linked back to their poor packaging of the asbestos waste? ASBG is concerned the task of legally binding culpability to those off site will be difficult and landfill operators, where they are not to blame will end up bearing the brunt of such actions.

***Recommendation 6 The EPA clarify how it will apply this new clause and for example detail what it expects a landfill operator to do to avoid prosecution under this section.***

### **3 CONSTRUCTION RECYCLING STANDARD**

ASBG has provided [our submission](#) on the EPA's 2014 [Draft protocol for managing asbestos during resource recovery of construction and demolition waste](#). Many of the issues under the Protocol have been transferred to the [Standards for managing construction waste in NSW](#) with either little change and appear if anything, generally tighter. As discussed in our 2014 submission the then Protocol and now the new Standard is not a practical document and is unworkable, especially in times of high throughput. The issue are again discussed below.

#### **3.1 Consideration of the logistics of C&D recycling**

##### **3.1.1 Weighbridge inspection**

Inspection of the top of the waste layer of a truck is reported to generate poor results, capturing only those obvious loads. Many asbestos disposals are where consigners deliberately hide the asbestos underneath and or mixed in with a clean layer on top. While a weighbridge inspection can stop the most obvious contaminated loads it is a poor method. If spread and tip is required for each load the weighbridge surface check is redundant and results in poor outcomes. All it does is to prevent the obvious contaminated loads from being tipped and spread.

##### **3.1.2 Tip and Spread**

In discussion with members, the practice of tipping spreading and inspection appears unworkable, if spreading to 100 mm depth is used. Current practices do not spread post tipping, but rely on the discharge of the truck as it moves forward to obtain a depth of around 500 mm or more. The 100 mm depth applied will increase the risks associated with asbestos dust and require extensive land area in which this is to be achieved. For example, a dog and trailer can hold 60 tonnes and hence would require a 300 m<sup>2</sup> area to tip and spread.

During a large construction project easily over 300 truck loads can present themselves to a C&D recycling facility per day. Usually the trucks will show up within 5 minutes of each other as they make round trips. As each tip and spread operation would take at least 15 minutes then each inspection pad would be able to process at maximum 4 loads and hour. To manage the throughput of this many truck loads would require at least 6 to 8 spreading areas operating simultaneously. In general most C&D sites do not have the area required to fit in 4 or even 2 spreading areas. Even then the need for the maximum rate of tip and spread would vary greatly depending on the local construction activity, traffic and other factors. For most of the time many the spread areas would be idle, a high cost in labour and land area, only needed for those high demand days.

The requirements for the tip and spread areas to be hardstand with surface water controls is very expensive and unpractical for the following reasons:

- The minimum area of 100m<sup>2</sup> will be inadequate and far larger areas would be required to meet the 100 mm depth for inspection.
- Cost of hardstand areas undermines the viability of C&D recycling
- Many sites have movable operational areas. Hence, hardstand areas would need to dug up and moved due to for example new landfill cells required on that area.

- Hardstand areas where asbestos has been detected from contaminated loads will require specialised cleaning and management of the '*asbestos waste*' from the wash down.

The last dot point suggests that a soil based tipping area has an advantage in that it can scrap and off load, via the rejected load process, any contaminants from the failed waste load. Soil based tipping areas can be designed to manage surface waters as well. Considering the level of dusts, dirt and other contaminants collected on any tipping area from waste the surface waters will require similar treatment processes regardless if it was a hardstand or not.

Overall ASBG considers the spread and tip process is considerably onerous and for large through put days unworkable. The need for a hardstand area is questionable and causes other issues that are not present with non hardstand areas. Nevertheless, ASBG does agree that a contamination checking systems is required to provide confidence in the recycled products generated from C&D facilities.

It seems the intent and the outcome of the Standard is to push the asbestos checking up the supply chain to the point of generation. Such on-site management already has an advantage of being able to removed asbestos before it is designated as asbestos waste. This is discussed next as one approach to lower the high throughput volume days experienced at C&D sites, by permitting the by-passing of the spread and check for each load.

While the Standard was according to the EPA developed with the C&D sector ASBG members state their input was ignored over a hazard reduction rather than a risk approach to asbestos contamination.

**Recommendation 7** *A more flexible and pragmatic approach to assessment of loads at C&D recycling centres be developed with consultation with the sector.*

### 3.2 An alternative by-pass for tip and spread

Regardless of the outcome of the final Standard, the need for assessing C&D loads for asbestos is required. Concerning ASBG is the focus is at the receiving end and not the source. If more responsibility, systems and checks can be installed at the point of generation this would solve many of the log jam issues that would occur to spread and check every load at the recycling facility. ASBG calls for the EPA to include a by-pass provision if the C&D waste received is pre-checked or passed an asbestos free assessment.

There is no doubt that such a process will need to be robust. Some of the issues which could be considered for such a process to work include:

1. A sign off from a registered Occupational Hygienist or equivalent, that the site the waste came from is 'asbestos free'. In other words the site does not nor never did have asbestos materials on it. This sign off could be accompanied by a contract or other documentation and where necessary supported by an insurance policy.
2. Alternatively where there has been asbestos materials found at the site a batch based sign off from a registered Occupational Hygienist or equivalent that this batch is 'asbestos free'. This approach would require careful screening of the waste in a similar fashion i.e. to 100 mm thick maximum. Note as the material on-site is not considered waste it can be source separated prior to departure from the site. This sign off could be accompanied by a contract or other documentation and where necessary, possibly supported by an insurance policy.

3. Every load of C&D leaving the site with its “pre-checked” classification would need to be tracked to the C&D recycling facility. Prior arrangements for acceptance of such wastes especially from sites under item 2, so the C&D facility can identify which site they came from.
4. Wastes meeting the criteria above can by-pass the tip and spread requirement for every load. The C&D facility can still undertake additional checks at its discretion, for example, to detect deliberate contamination on route.

Having a framework where more source separation occurs at the site of generation should assist in the development of more on site management of C&D waste materials. For many on-site source separation processes the removal of contaminants including asbestos will be the only process, thereby sending the C&D material to the C&D recycler to process it into products via further source separation, screening and processing. Note if the material from the site passes the RRO requirements it has little incentive to go to a C&D recycler, unless they can value add.

***Recommendation 8*** *The EPA introduce a by-pass process for the tip and spread check if the C&D waste material has been pre-checked at the point of generation and subject to documented checking and tracking process at the C&D recycling facility.*

### 3.3 The Inspection Process

#### 3.3.1 Sorting

Under s2.1 Sorting item 2 states:

*A load of construction waste that meets the requirements of a resource recovery order when it is received at the C&D waste facility. This load of waste must be immediately transferred to the appropriate waste storage area referred to in Standard 4.*

ASBG note if the generator site is large enough it could further process and manufacture a waste that meets a Resource Recovery Order, (RRO) which may be reused at other locations. ASBG predicts this will be a small component as many C&D recyclers have developed well known brands from their input streams and have an ongoing market place in which to sell such materials. They also have the equipment such as crushing, screening and others that are of high capital cost. Wastes that do meet RRO criteria would have little incentive to be sent to a C&D recycler unless there was an economic incentive to do so.

Wastes that do meet the RRO that come directly from the generation point will not be subject to the C&D Standard. The EPA needs to be aware that if the C&D Standard is set too restrictive they will simply reduce the size of C&D recycling facility market and move it upstream to the generation sites. Here where there is less scrutiny the RRO and RRE system will therefore require far more policing. Put simply heavy regulation on one part of the market will simply reduce due to costs and constraints. The market will move to where there is less costs and likely less regulation and scrutiny. Alas a new loop hole is likely to emerge and be exploited by the darker end of the waste sector.

Additionally, wastes that left a site that complied with the RRO can still be tampered with, such as having other wastes blended or added to the load. Hence the requirement to go to the storage area without any options for further assessment can lead to stockpile contamination.

**Recommendation 9** *The phrase in s2.1 ‘This load of waste must be immediately transferred to the appropriate waste storage area referred to in Standard 4’ be replaced with ‘This load of waste can be transferred to the appropriate waste storage area referred to in Standard 4 subject to additional inspection by the facility.’*

### 3.3.2 Rejected Loads Register

ASBG members consider the requirement 3, under s1.4 Rejected Loads Register is not practicable. Item 3 *the location/address from which the rejected load of waste was received* does not consider the practical issues of obtaining this information. There are many problems in obtaining this including:

- The driver picked up the truck from a depot already loaded and the waste did not come from this depot
- The driver cannot or refuses to remember where the waste came from
- The driver claims not to speak English

Assuming the C&D facility has control or access to the address of the generator is naive. Additionally, the facility has no powers to demand answers or follow up on false information.

This issue is a result of the discontinuation of the licensing of all waste transporters. While this was done for administrative reasons the outcome is there is no control on who transports non-trackable wastes in NSW. Any truck driver can haul waste with no checking or registration. While a return to the older licence provisions is not called for there are other simpler registration processes that can be used.

**Recommendation 10** *The EPA remove item 3 from the Rejected Loads Register.*

The best the facility can do is to require the drivers name and address on his licence. Even then the facility can only reject the trucks entry if they refuse to do so at the weighbridge which is again problematic.

### 3.4 Management of stockpiles

Under the 2014 Protocol, provision was made for the removal of asbestos finds in stockpiles at C&D facilities. This provision, while cumbersome and conservative, permitted 20m<sup>3</sup> of waste to be removed around the stockpile. Under the Standard this has been removed, which tends to suggest that if asbestos is found the entire stockpile may be condemned to landfill. Treatment of *asbestos finds* requires clarification.

Removal of the *asbestos finds* in stockpiles removes business certainty that an approved and risk based action can be undertaken to deal with asbestos contamination issues. It appears the overly conservative hazard based rather than a risk based approach to asbestos over all other contaminants leads to many perverse outcomes.

Another example that asbestos is treated differently to all other wastes (i.e. not risk based, but presence based) is under s12 Inspection Point 2:

*4. Where any asbestos waste is observed, reject the load of waste by ensuring that the entire load is immediately re-loaded onto the vehicle in which it arrived and that the vehicle leaves the C&D waste facility and then immediately record the required information into the C&D facility’s rejected loads register;*

- 5. Ensure that all unpermitted waste types identified within the load are immediately moved to the appropriate waste storage area as required by Standard 4; and*

Hence, only asbestos contamination triggers a complete load rejection, but all other unpermitted wastes can be sources separated on site and dealt with. So radio-active wastes, leaking pesticide containers, LPG bottles, jars of arsenic etc can be removed and put aside for management as trackable wastes, but only asbestos triggers a whole load rejection.

**Recommendation 11** *That an ‘asbestos finds’ procedure be reinstalled in the Standard to provide some practical certainty on the management of these finds.*

## 4 CONCLUSION

Ongoing source separation of recyclable materials from tipping faces and at landfills should be permitted to continue. However, some controls on the such as requiring permission to exhume old wastes, that >5 days after tipping in the landfill face can close the loophole on arbitraging waste levy differences over time. A ban on the transport of waste from landfills is considered far too restrictive and its outcome can be achieved by other methods. As a consequence, it is redundant, too restrictive and not required.

Improved methodologies for the assessment of deductions and rebates, which does not remove the balance of probabilities legal burden of proof will ensure a fairer collection of the waste levy. Levy disputes should be essentially the same as taxation disputes and subject to similar burdens of proof.

Use of the mass balance is in itself prone to errors and consequently its use needs to be reconsidered and replaced with other methods. Nevertheless, EPA control over the measurement of mass balances is considered out of step with other taxation processes handing to much power over large amounts of money that can make or break a business. Alternatively, use of a mass balance protocol which can be used for dispute settlement purposes up to court level should be adopted to ensure there is full understanding by waste facilities and the EPA on how it can be calculated and how errors disputes can be resolved.

The C&D Standard is an attempt to ensure recycled product from C&D facilities are kept asbestos free. However, the practices used are especially for large load volume days unworkable. If employed the sources separation and recycling of C&D waste will be pushed back to the large generators sites where they have room. Shrinkage in the C&D recycling facilities volumes needs to be prevented and a better more workable solution, developed with true consultation of the sector is required. ASBG proposed one method to better manage large volumes, in undertaking pre-assessment of asbestos contamination and tracking of the waste to the C&C recycler. This would permit the by-passing of every load from the tip and spread to a QC process the facility chooses. Also the mechanism for dealing with ‘asbestos finds’ in stockpiles needs to be reinstalled to ensure a final method to prevent asbestos in the site’s product should be available and supported by the EPA.

An minor amendment of rejected loads register will remove the requirement to identify the generation source of such loads and replaced with the drivers licence details.