



Review of the Environmental Protection (Controlled Waste) Regulations 2004

Discussion paper | March 2018





Government of **Western Australia**
Department of **Water and Environmental Regulation**

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1 Introduction

The Department of Water and Environmental Regulation (DWER) is carrying out a review of the *Environmental Protection (Controlled Waste) Regulations 2004*¹ (Controlled Waste Regulations).

The purpose of this discussion paper is to consult with stakeholders on proposals to reform the management of controlled waste in Western Australia to ensure the Controlled Waste Regulations are risk-based, streamlined and effective. This discussion paper should be considered as preliminary consultation with industry stakeholders and provides an opportunity for submissions. Results of the consultation will lead to the development of options for reform that will be the subject of a comprehensive regulatory impact assessment process.

The Controlled Waste Regulations regulate the transport and lawful unloading of hazardous wastes, known as controlled wastes. The regulations apply to controlled waste produced by or as the result of:

- an industrial or commercial activity;
- a medical, nursing, dental, veterinary, pharmaceutical or other related activity;
- activities carried out on or at a laboratory; or
- an apparatus for the treatment of sewage.

The types of controlled waste covered by the regulations are listed in schedule 1 of the Controlled Waste Regulations.

In Western Australia, over 500,000 tonnes of controlled wastes are produced by commercial or industrial activities each year. The transport and disposal of controlled wastes are regulated to protect the environment and public health.

The Controlled Waste Regulations require a person or business that transports controlled waste as part of a commercial activity to be licensed as a controlled waste carrier and:

- establish a licensing requirement for controlled waste carriers, drivers, vehicles and tanks;
- regulate the transportation, tracking and unloading of a controlled waste;
- set obligations on waste holders, carriers and drivers of vehicles transporting controlled waste; and
- regulate the transport of asbestos.

The Controlled Waste Regulations commenced in 2001 and were most recently amended in 2014.

¹ The Controlled Waste Regulations can be viewed at:

[www.slp.wa.gov.au/pco/prod/filestore.nsf/FileURL/mrdoc_29713.pdf/\\$FILE/Environmental%20Protection%20\(Controlled%20Waste\)%20Regulations%202004%20-%205B01-c0-00%5D.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/filestore.nsf/FileURL/mrdoc_29713.pdf/$FILE/Environmental%20Protection%20(Controlled%20Waste)%20Regulations%202004%20-%205B01-c0-00%5D.pdf?OpenElement).

The regulations are currently being reviewed. This paper has been developed to support the review process. Submissions are invited on how the regulations may be improved.

1.1 Issues and opportunities to improve the controlled waste regulations

Regular reviews of controlled waste management are needed due to changes in technologies and the production and treatment of controlled wastes. In addition, as knowledge about the risks of particular wastes and management practices change, the regulation of controlled waste must adapt.

DWER has reviewed the Controlled Waste Regulations and identified gaps and opportunities for improvements on the following matters:

- classification of controlled waste by the waste holder;
- ensuring waste is unloaded at a waste facility that may lawfully receive it;
- defining who is a waste carrier;
- classifying types of waste;
- disposal of controlled waste at landfills;
- management of asbestos transport; and
- interstate transport of waste.

Opportunities to standardise, streamline the regulations and reduce regulatory burden have been identified for:

- licensing of drivers of controlled waste vehicles;
- licensing of vehicles;
- setting tracking thresholds;
- removing categories for bulk and packaged controlled wastes;
- granting waste class exemptions; and
- managing controlled wastes according to risk.

More information on these gaps, opportunities and proposed amendments is provided below.

1.2 Addressing gaps in the regulations

Obligations on a waste holder for the classification of controlled waste

The Controlled Waste Regulations currently do not require waste holders to adequately classify the constituent elements of waste being transported. This means that waste may, in some cases, be delivered to waste facilities that are not authorised to receive it.

To address this gap, it is proposed that a consignment authorisation process be introduced that places an obligation on the waste holder to undertake analysis of the waste. The waste holder will enter into an agreement with a waste facility that may lawfully receive that waste. Once these obligations are met, the waste carrier must ensure the waste is handled in accordance with the consignment authorisation.

Recommendation 1: That a consignment authorisation process be established that requires the waste holder to adequately classify their waste by:

- undertaking chemical analysis when necessary; and
- entering into an agreement with a waste facility operator whose premises may lawfully receive the waste.

Clarifying who is responsible for controlled waste

The controlled waste regulations allow responsibility for controlled waste to be transferred from the waste holder to the occupier of a waste facility via carriers and drivers. Some waste holders obtain a carrier licence and transport their own controlled wastes. Other waste holders engage a third party carrier.

Once a waste holder has handed waste over to a third party carrier for transport, responsibility for the waste transfers to the carrier or the driver employed by the carrier. The carrier/driver is then responsible for unloading the controlled waste at a facility lawfully allowed to accept it.

DWER considers that the waste holder, as the generator of the controlled waste and the person engaging the waste carrier, should retain responsibility for the controlled waste from the point of waste generation to the point of waste disposal. Requiring the waste holder to remain responsible for the waste provides an incentive for the holder to ensure the waste is properly disposed of by the carrier.

Recommendation 2: That the regulations be amended so that the waste holder remains responsible for the waste until it has been accepted at a waste facility that is lawfully allowed to accept it.

Requiring correct disposal of controlled wastes

Regulation 3(6)(b) of the Controlled Waste Regulations states that the regulations do not apply to a controlled waste that is suitable for disposal to a Class I, II or III landfill.

A consequence of this regulation has been that liquid or solid controlled waste is sometimes inappropriately added to other solid material (such as sawdust or soil) and disposed of to landfill.

Inappropriate disposal of controlled waste can lead to environmental harm.

The Controlled Waste Regulations should apply to all controlled wastes generated by a commercial or industrial activity regardless of their liquid or solid form.

Recommendation 3: That regulation 3(6)(b) be removed from the Controlled Waste Regulations to prevent inappropriate disposal to landfill of liquid or solid controlled waste by mixing with other solid material. All commercial or industrial movements of liquid and solid controlled waste will be subject to the regulations.

Strengthening the management of asbestos transport

Asbestos is listed as a controlled waste in the Controlled Waste Regulations. However, regulation 3(5) restricts which parts of the regulations apply to asbestos. The result of regulation 3(5) is that the transportation of asbestos does not require licensing as a carrier or waste tracking.

Asbestos is one of the largest hazardous waste flows in Australia, making up around 11 per cent of national hazardous waste reporting. Disposal volumes of asbestos in Western Australia are unknown because of the lack of tracking data. Data on the disposal of asbestos from landfill operators who claim the levy rebate² or report a volume of asbestos to DWER indicate that more than 40,000 cubic metres of asbestos was disposed of in Western Australia in 2015.

The public health risk of asbestos, its presence in the environment, and the history of illegal dumping of asbestos indicate a need for greater regulation of this material.

Recommendation 4: That all commercial transport of asbestos be subject to the licensing and tracking requirements of the Controlled Waste Regulations. This would be achieved by repealing regulation 3(5).

Regulating interstate transport of controlled waste

Interstate transport of waste may impact on receiving communities and the environment. Unnecessary transport of a controlled waste creates environmental and public health risks that can be avoided by local disposal.

The *National Environment Protection (Movement of Controlled Wastes between States and Territories) Measure 1998* (Controlled Waste NEPM) provides a national framework for developing and integrating systems for the management of the movement of controlled wastes between States and Territories. Each jurisdiction is required to implement and give legal effect to National Environment Protection Measures made under the *National Environment Protection Council Act 1994*.

The Controlled Waste NEPM has been implemented in other Australian jurisdictions using a number of different methods. New South Wales has incorporated the NEPM provisions into the *Protection of the Environment Operations (Waste) Regulation 2014*. The Victorian *Environment Protection Act 1970* authorises the Environmental Protection Authority to develop waste management policies and the NEPM provisions are given effect through the Movement of Controlled Waste between States and Territories Policy. South Australia also uses statutory policy: Movement of Controlled Waste Policy 2014 to implement the NEPM. The Queensland *Environmental Protection Regulation 2008* implements the NEPM.

DWER tracks movements of controlled waste into Western Australia. The Department recorded 21 controlled waste movements into Western Australia and 99 movements outwards in 2015–16. In 2016–17, there were 37 inbound movements and 156 outbound movements of controlled waste.

² The *Waste Avoidance and Resource Recovery Levy Act 2007* provides for a levy to be applied to waste received at metropolitan landfills and metropolitan waste received at landfills outside the metropolitan area. Asbestos waste that is not mixed with other kinds of waste is not subject to the landfill levy. Landfill operators who pay the levy can claim a rebate from the Department.

In the absence of regulations to implement the NEPM, DWER lacks the capacity to require notification of interstate movement of waste and prevent inappropriate movement of controlled waste. This increases risks to the environment and the community.

Recommendation 5: That the NEPM requirements be incorporated as a new part under the Controlled Waste Regulations. This will enable enforcement of NEPM obligations.

Updating the schedule of controlled wastes

Controlled wastes are listed in Schedule 1 of the Controlled Waste Regulations. If a waste is listed in Schedule 1, and is produced by a commercial or industrial activity, then it is classified as a controlled waste and must be managed in accordance with the Controlled Waste Regulations.

The controlled wastes listed in Schedule 1 are mostly consistent with lists of hazardous wastes in the Basel Convention and the Controlled Waste NEPM. Maintaining nationally consistent lists of controlled wastes helps to reduce administrative overheads for industry stakeholders. Consistent waste tracking terminology, and codes, aid tracking and record keeping for local, interstate and international movements of controlled wastes.

DWER considers it would be beneficial for the Controlled Waste Regulations to include a provision that would allow the list of controlled wastes to be reviewed and updated from time to time, including to take account of new and emerging wastes.

Examples of new and emerging wastes being transported on roads in Australia include:

- lithium ion batteries;
- contaminated biosolids;
- per and polyfluoroalkyl substances (PFAS); and
- persistent organic pollutants (POPs) waste.

Most of these wastes could be tracked under existing waste codes in the Controlled Waste Regulations. Under the current regulations, the waste holder or controlled waste carrier notifies DWER when the waste is being transported and DWER advises on the most appropriate waste code to use.

There are a number of options available to update the list of regulated controlled wastes:

- Remove Schedule 1 from the Controlled Waste Regulations and insert a reference to a list of controlled wastes published by DWER and updated from time to time.
- Retain Schedule 1 and insert a clause in the Controlled Waste Regulations that requires Schedule 1 to be reviewed regularly on specified periodic basis.
- Retain Schedule 1 and insert a power that allows for the classification and de-classification of controlled wastes.

Recommendation 6: That the Controlled Waste Regulations be amended to support classification and de-classification of controlled wastes.

1.3 Streamlining the regulations and reducing regulatory burden

Streamlining accreditation of drivers of controlled waste vehicles

In Western Australia, drivers of bulk controlled waste vehicles must hold a controlled waste driver licence and carry a driver identification card. In order to demonstrate competency for a controlled waste driver licence, drivers must complete a multiple-choice test on the requirements of the Controlled Waste Regulations and submit this with their licence application. Drivers of packaged controlled waste do not require a controlled waste driver licence.

Other Australian jurisdictions have different training and/or licensing requirements for controlled waste drivers. New South Wales has a combined licensing system for dangerous goods and controlled waste drivers. Queensland and Victoria require controlled waste drivers to have completed relevant accredited training.

DWER considers that driver competencies should be standardised across the bulk and packaged controlled waste categories to reflect the similar environmental risks posed by these two types of controlled waste transport. There are two options available:

- Remove the requirement for controlled waste drivers to hold a separate licence and shift the responsibility for driver competency to the controlled waste carrier.
- Require all controlled waste drivers to demonstrate the same controlled waste competencies and hold a controlled waste driver licence.

Recommendation 7: That the driver licensing requirements in the Controlled Waste Regulations be standardised for all controlled waste drivers.

Removing unnecessary licensing of vehicles

In Western Australia, a controlled waste vehicle licence is required for vehicles and tanks used to transport bulk-controlled waste unless the vehicle is already licensed under the Dangerous Goods Regulations. Vehicle licences are not required for the transport of packaged controlled waste, but all controlled waste vehicles must be listed in the controlled waste tracking system. In other States, vehicles are registered as part of the carrier licence or waste transport permit.

DWER considers that the responsibility for maintaining vehicles for the purpose of transporting controlled waste rests appropriately with the controlled waste carrier, and that licensing individual vehicles is an unnecessary regulatory burden unless the vehicle also requires licensing under the Dangerous Goods Regulations.

Recommendation 8: That the regulations be amended by removing the requirement for individual vehicle licensing, and requiring all vehicles associated with the transport of controlled waste to be listed on the controlled waste carrier licence and in the controlled waste tracking system.

Setting more appropriate tracking thresholds

The tracking of controlled waste is a requirement in most other Australian jurisdictions and is a requirement of the Controlled Waste NEPM. Tracking of controlled waste:

- ensures the safe transport of waste to an approved location;
- minimises the risk of unauthorised discharge into the environment; and
- collects information to assist in identifying priority waste management issues.

Under the Controlled Waste Regulations, packaged controlled waste of quantities of 200 kg or 200 L or more and any amount of bulk controlled waste is tracked through the completion of controlled waste tracking forms by waste holders, carriers and waste facilities. Tracking forms are issued by DWER to licensed carriers, either electronically via the Controlled Waste Tracking System or in a booklet of paper forms.

The licensed carrier who transports a controlled waste and the operator of the waste facility receiving the controlled waste are required to send a copy of the tracking form to DWER.

Although any amount of controlled waste must be transported by a licensed carrier, and tracking is a requirement for all bulk controlled waste (that is, in a tank), in the case of packaged controlled waste, tracking only becomes a requirement when 200 kg or 200 L or more of it is transported.

Current thresholds mean that small quantities of very hazardous waste are not tracked, while larger quantities of low risk waste are tracked. The 200 kg and 200 L thresholds are designed to help distinguish commercial quantities of waste, however, do not account for very hazardous wastes that can be transported in small quantities.

DWER considers that the regulations should be amended to apply a risk-based approach to regulation. This would see a differentiated tracking threshold applied to controlled wastes depending on their risks to public health and the environment.

Recommendation 9: That the tracking threshold for high risk wastes be removed so these wastes will be tracked in small volumes.

Recommendation 10: Wastes classified as moderate risk will retain the tracking threshold of 200 kg or 200 L.

Recommendation 11: Wastes classified as low risk will not be tracked or could be declassified as a controlled waste.

Removing categories for bulk and packaged controlled wastes

The Controlled Waste Regulations require licensing and training of the driver of a vehicle with a bulk controlled waste tank and licensing of the vehicle, while the driver of a vehicle carrying the equivalent volume of the same or more hazardous waste in different packaging does not require a licence, training or vehicle licensing.

DWER acknowledges that the differentiated licensing and tracking requirements that apply to bulk and packaged controlled waste are not justified by the risk profile of particular waste types. Controlled wastes transported in a large tank are not

necessarily more dangerous than the same volume of controlled waste transported in a number of smaller containers.

Recommendation 12: That the regulations be amended to remove the terms “bulk” and “packaged” controlled waste.

Allowing waste class exemptions

The Controlled Waste Regulations allow the Chief Executive Officer (CEO) of DWER to exempt a person from the requirements of Parts 2 and 3 of the Controlled Waste Regulations. An exemption cannot be given to a class of person or a type of controlled waste.

Other Australian States have different systems that allow for class exemptions. Victoria has a waste classification system whereby different types of wastes can be declared to be non-prescribed industrial wastes under certain circumstances and conditions. The New South Wales EPA is authorised to grant exemptions for types of wastes under regulation 42 of the Protection of the Environment Operations (Waste) Regulation.

In Western Australia, the lack of a capacity to grant class exemptions has created barriers to participation in product stewardship schemes. For example, a trade painter who transports liquid waste paint generated in the course of their commercial activity needs to be licensed as a controlled waste carrier. This requirement may be a barrier for painters to participate in the National Paint Product Stewardship Scheme (Paintback) which provides free paint collection services for architectural and decorative waste paint.³

In granting class exemptions, the CEO would need to consider the risks that particular wastes pose to public health and the environment.

Recommendation 13: That the Controlled Waste Regulations be amended to allow the exemption of classes of waste from parts of the regulations. The exemptions will be subject to conditions.

Managing controlled wastes according to risk

A list of hazardous characteristics is included in the Basel Convention and the Controlled Waste NEPM, as well as in equivalent legislation in other Australian jurisdictions.

Although the purpose of the Controlled Waste Regulations is to manage the risks to public health and the environment posed by controlled wastes, the regulations do not include a list of hazardous characteristics.

A waste is subject to the provisions of the Basel Convention and the Controlled Waste NEPM if it is:

- one of the wastes listed; and/or

³ A section 6 exemption under the *Environmental Protection Act 1986* allows trade painters to transport up to 100 litres of liquid waste paint to a waste facility participating in the National Paint Product Stewardship Scheme without the requirement to be licensed as a Controlled Waste Carrier.

- demonstrates one of the hazardous characteristics.

The list of hazardous characteristics for waste types is provided in Appendix A.

Recommendation 14: DWER proposes to include a list of hazardous characteristics in the Controlled Waste Regulations as set out in Appendix A.

Deregulating low risk waste

Breaches of regulations result in expensive waste clean-up costs for landholders, local governments and the State Government. The environmental and public health risks of illegally dumped waste and poor waste management are also critical factors in the level of regulation required for a controlled waste.

There are a number of wastes listed in Schedule 1 of the Controlled Waste Regulations that can be considered for deregulation. A ‘waste’ could be considered low risk if it meets both of the following criteria:

- the environmental and public health risk of the waste is low; and
- there is a history of effective environmental management of the waste.

Removal of a waste from the licensing and tracking provisions of the Controlled Waste Regulations would not mean that disposal of that waste was unregulated, as the provisions of the *Environmental Protection Act 1986* would remain.

Recommendation 15: That consideration be given to amending the Controlled Waste Regulations to remove low risk waste.

2 Table of recommendations

Recommendation 1: That a consignment authorisation process be established that requires the waste holder to adequately classify their waste by:

- undertaking chemical analysis of the waste when necessary; and
- entering into an agreement with the waste facility that may lawfully receive the waste.

Recommendation 2

The regulations be amended to provide that the waste holder remains responsible for the waste until it has been unloaded at a waste facility that is lawfully allowed to accept it.

Recommendation 3

That regulation 3(6)(b) be removed from the Controlled Waste Regulations to prevent inappropriate disposal to landfill of liquid or solid controlled waste by mixing with other solid material. All commercial or industrial movements of liquid and solid controlled waste will be subject to the regulations.

Recommendation 4

All commercial movements of asbestos be subject to the licensing and tracking requirements of the Controlled Waste Regulations. This would be achieved by repealing regulation 3(5).

Recommendation 5

The NEPM requirements be incorporated as a new part under the Controlled Waste Regulations. This will enable enforcement of NEPM obligations.

Recommendation 6

The Controlled Waste Regulations be amended to support classification and de-classification of controlled wastes.

Recommendation 7

That the driver licensing requirements in the Controlled Waste Regulations be standardised for all controlled waste drivers.

Recommendation 8

The regulations be amended by removing the requirement for individual vehicle licensing, and requiring all vehicles associated with the transport of controlled waste to be listed on the controlled waste carrier licence and in the controlled waste tracking system.

Recommendation 9

The tracking threshold for high risk wastes be removed so these wastes will be tracked in small volumes.

Recommendation 10

Wastes classified as moderate risk should retain the tracking threshold of 200 kg or 200 L.

Recommendation 11

Wastes classified as low risk should not be tracked or could be de-classified as a controlled waste.

Recommendation 12

The Controlled Waste Regulations be amended to remove the terms “bulk” and “packaged” controlled waste.

Recommendation 13

The Controlled Waste Regulations be amended to allow the exemption of classes of waste from parts of the regulations. The exemptions would be subject to conditions.

Recommendation 14

DWER should include a list of hazardous characteristics in the Controlled Waste Regulations as set out in Appendix A.

Recommendation 15

Consideration be given to amending the Controlled Waste Regulations to deregulate low risk waste.

3 Having your say

3.1 Key questions for stakeholders

DWER is seeking comments from stakeholders on the recommendations contained in this paper.

Comments on any other matter relevant to the Controlled Waste Regulations are also welcome.

Please take careful note of the deadline for comment – 1 June 2018 – as no late submissions will be accepted.

3.2 How to provide feedback

Please direct submissions or comments about this paper to:

By email: controlledwastereview@dwer.wa.gov.au

By post:

Department of Water and Environmental Regulation
Controlled Waste Consultation
Locked Bag 33
CLOISTERS SQUARE WA 6850.

3.3 How your feedback will be used

By making a submission, you are consenting to the submission being treated as a public document. If you do not consent to your submission being treated as a public document, you should mark it as confidential, specifically identify those parts which you consider should be kept confidential, and include an explanation.

DWER may request that a non-confidential summary of the material is also given. It is important to note that even if your submission is treated as confidential by the Department, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992*, or any other applicable written law.

Appendices

Appendix A – Hazardous characteristics

UN Code	Characteristics
H1	<p>Explosive</p> <p>An explosive substance or waste is a solid or a liquid substance or waste (or mixture of substances and wastes) which is in itself at such a temperature and pressure and at such a speed as to cause damage to the surroundings.</p>
H3	<p>Flammable liquids</p> <p>The word flammable has the same meaning as inflammable. Flammable liquids are liquids or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers and so on, but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off flammable vapour at temperatures of not more than 60.5 degrees Celsius, closed-cup test, or not more than 65.6 degrees Celsius, open-cup test.</p>
H4.1	<p>Flammable solids</p> <p>Solids or waste solids, other than those classified as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction</p>
H4.2	<p>Substances or wastes liable to spontaneous combustion</p> <p>Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up in contact with air, and being then liable to catch fire.</p>
H4.3	<p>Substances or wastes which, in contact with water, emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gasses in dangerous quantities.</p>
H5.1	<p>Oxidizing</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to, the combustion of other materials.</p>
H5.2	<p>Organic peroxides</p> <p>Organic substances or wastes which contain the bivalent-O-O</p>

	structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
H6.1	<p>Poisonous (acute)</p> <p>Substances or wastes liable to either cause death or serious injury, or to harm health if swallowed or inhaled or by skin contact.</p>
H6.2	<p>Infectious substances</p> <p>Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animal or humans.</p>
H8	<p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.</p>
H10	<p>Liberation of toxic gases in contact with air or water</p> <p>Substances or wastes which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.</p>
H11	<p>Toxic (delayed or chronic)</p> <p>Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.</p>
H12	<p>Ecotoxic</p> <p>Substances or wastes which if released present, or may present, immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.</p>
H13	<p>Capable, by any means, after disposal of yielding another material, for example leachate, which possesses any of the characteristics listed above</p> <p>Substances or wastes which, after disposal, of yielding another material, for example leachate, which possesses any of the characteristics listed above.</p>
	<p>Other reasons</p> <p>Potential to have a significant adverse impact on ambient air quality.</p> <p>Potential to have a significant adverse impact on ambient marine, estuarine or fresh water quality.</p>