

Guideline

Exempt waste – Earth contaminated with a hazardous contaminant

This guideline is intended to assist a person making an application under section 28 of the Waste Reduction and Recycling Act 2011 for approval of waste as exempt waste - earth contaminated with a hazardous contaminant from land recorded in the environmental management register or contaminated land register.

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1 Introduction

The intent of this guideline is to assist a person making an application for waste as exempt waste under section 28 of the [Waste Reduction and Recycling Act 2011](#) (WRR Act). Specifically, the guideline provides for applications for waste as exempt waste for earth contaminated with a hazardous contaminant from land recorded in the environmental management register (EMR) or contaminated land register (CLR).

The eligibility criteria that the chief executive (the department) must consider when deciding an application are set out in sections 28 to 31 of the WRR Act and section 10 of the Waste Reduction and Recycling Regulation 2023 (WRR Regulation).

This guideline also describes supporting information that is required as part of an exempt waste application made to the department.

2 Key Terms

- The WRR Act defines **earth** to mean natural materials such as clay, gravel, sand, soil and rock.
- The Environmental Protection Regulation 2019 defines **clean earth** to mean any natural substance found in the earth that is not contaminated with waste or a hazardous contaminant.
- The **EMR** and the **CLR** are public registers under the *Environmental Protection Act 1994* which contain information about contaminated land in Queensland.
- **Hazardous contaminant** is defined in the *Environmental Protection Act 1994*:
hazardous contaminant means a contaminant, other than an item of explosive ordnance, that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—
 - a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
 - b) its physical, chemical or infectious characteristics.
- For the purposes of this guideline, earth contaminated with a hazardous contaminant will be referred to as **contaminated earth**.

3 Applying for an approval of waste as exempt waste

3.1 Who may apply

The WRR Act provides that a person may apply to the department for approval of waste that is identified in the application as exempt waste.

A person is defined as an individual or a business. The person who applies for an approval must be the person who is responsible for the disposal of the waste to the waste disposal site. Depending on your situation, the person could be the owner of the site, a site developer, a principal contractor, a demolition contractor or a transport contractor.

Please note that an approval is not transferrable to another person.

3.2 Summary of application eligibility

The application must be:

- In the [approved form](#), which means the application form provided on the department's website, or via email from by the department;

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- Be supported by enough information to allow the department to decide the application; and
- Be accompanied by the [fee](#) prescribed in the WRR Regulation.
- As per s28 of the WRR Act - The application must provide sufficient information to demonstrate that the type of waste is earth contaminated with a hazardous contaminant from land recorded in the EMR or CLR.
- As per s10 of the WRR Reg - The department must refuse an exempt waste application relating to earth contaminated with a hazardous contaminant from land recorded in the EMR or CLR unless satisfied:
 - a) The earth was contaminated before 1 January 1992; or
 - b) The earth contains waste removed from a landfill cell that is to be delivered to a levyable waste disposal site as part of a significant community project; or
 - c) The earth contains waste that was disposed to landfill before 1 January 1992 (whether or not disposal continued after that time) at land recorded on the EMR or CLR; **and** either of the following applies –
 - i. the earth is to be removed from the land by or for a local government and delivered to a levyable waste disposal site for the sole purpose of remediating contamination;
 - ii. the earth is to be removed from the land by or for a local government and delivered to a levyable waste disposal site for the purpose of conducting or operating a resource recovery and transfer facility on the land, and waste will no longer be disposed of as landfill at the land.
- As per s10(2) of the WRR Reg - the department must refuse an exempt waste application relating to earth contaminated with a hazardous contaminant from land recorded in the EMR or CLR if satisfied the earth, if analysed in accordance with the site contamination guideline:
 - a) is contaminated solely with petroleum hydrocarbons; or
 - b) contains only contaminants that can reasonably be treated by bioremediation and made suitable for any use.

3.3 Submitting the application form

The application must be submitted to the department via wastelevyapps@des.qld.gov.au.

When a complete application is received (including payment of fee), the department must decide within 28 days to either grant or refuse the application, or to request further information or documents. Assessment of applications is carried out ensuring that decisions are made within the legislative assessment timeframes.

If approved, the waste levy exemption applies from the date the approval period commences. This means that any contaminated earth that is disposed prior to the approval period commencing will be subject to the applicable waste levy rate.

3.4 Request for additional information or documents

Where insufficient information or documents have been provided with an application, the applicant may be given a notice requiring additional information or documents.

In accordance with section 29 of the WRR Act, the notice will request the additional information or documents to be provided within a stated period. Section 29(2) of the WRR Act allows for the timeframe to be extended by agreement with the department but this must be requested and agreed to before the information response due date.

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On receipt of the requested additional information or documents, the department must decide to grant or refuse the application within 28 days.

Statutory timeframes for contaminated earth applications can be found in the WRR Act.

3.5 Completing the application form

The [approved form](#) is structured to ensure that the applicant can determine if the eligibility criteria are met prior to submitting an application.

It is recommended that summary statements are provided for each relevant question to assist the department in assessing the application. If the application makes reference to supporting documents, the summary statement provided should include a direct reference to the section of the document which the question relates. For example, supporting documents may include contaminated land site investigation reports, contaminated soil characterisation sampling reports, laboratory analysis certificates, site sampling plans, site photographs including historical photographs, historical aerial imagery, and site history reports.

In circumstances where a response to a mandatory question is unknown, the applicant should obtain relevant information to enable the question to be completed prior to continuing and submitting the form for assessment. If 'not applicable' applies to a question, the applicant should provide justification as to why it is 'not applicable'.

3.5.1 Eligibility Criteria

In completing the [approved form](#), there are a number of questions that must have a response provided.

3.5.1.1 Site Details

The applicant must provide the details of the site from where earth has been identified as earth contaminated with a hazardous contaminant from land in the EMR or CLR. This will include the physical address, the lot on plan, and the site ID reference as stated in the EMR or CLR. The physical address and lot on plan must match that as provided in the EMR or CLR. If this information does not match, it may result in a request for further information seeking justification for the discrepancies.

3.5.1.2 Is the earth contaminated with a hazardous contaminant?

One of the key criteria of this application is to demonstrate that the earth is contaminated with a hazardous contaminant.

The applicant must provide sufficient information to demonstrate that the contaminated earth meets the definition of a hazardous contaminant. The applicant must provide a summary statement in the application form and should include references to attached reports where appropriate.

Details including maps/plans must be provided showing the areas, depths of excavation, total volume and tonnage of all the contaminated earth to be removed from the site, with representative sample locations and depths identified.

To assist in establishing if earth is contaminated with a hazardous contaminant, relevant State and National guidelines and standards will be considered by the department in the assessment including but not limited to the following:

- a) [National Environment Protection \(Assessment of Site Contamination\) Measure](#) (NEPM), made by the National Environment Protection Council under the *National Environment Protection Council Act 1994* (Cwlth).
- b) [PFAS National Environmental Management Plan](#) (PFAS NEMP).

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The selection of contaminant thresholds must be determined by a person with suitable skills and experience in contaminated land assessment. It must be demonstrated that the contaminant(s) exceed the relevant thresholds.

The applicant must provide references to the applicable guideline used to determine that the earth is contaminated with a hazardous contaminant.

Notes on contaminated earth mixed with other waste or material

For contaminated earth to be approved as exempt waste, it must not be mixed with any other waste or material including but not limited to clean earth, concrete, steel, or other building material. An application found to be for contaminated earth that is mixed with other waste or material, may be refused.

Examples of where contaminated earth and waste might become mixed is during demolition of structures or when stockpiling occurs after excavation or scraping of a site. In these circumstances it is important to demonstrate that the waste is only earth contaminated with a hazardous contaminant, such as by demonstrating that waste types are stockpiled separately and providing relevant evidence such as site photographs and soil sample descriptions.

3.5.1.3 Is the earth contaminated solely with hydrocarbons? (s10(2) WRR Regulation)

The applicant must disclose if the earth is contaminated solely by hydrocarbons. Per section 10 of the WRR Regulation the earth must be analysed in accordance with the site contamination guideline (refer to Schedule B3–Guideline on Laboratory Analysis of Potentially Contaminated Soils as made by the National Environment Protection Council). If the analysis determines that the earth is contaminated solely with petroleum hydrocarbons, the department must refuse the application in accordance with section 10 of the WRR Regulation.

3.5.1.4 Can the contaminants be treated by bioremediation? (s10(2) WRR Regulation)

The applicant must demonstrate that the contaminated earth is unable to be reasonably treated by bioremediation that would allow it to be used for other purposes and not disposed to landfill.

The applicant must provide details outlining how it has been determined that the contaminants are unable to be treated by bioremediation. Generally, bioremediation treatment methods may be suitable for sites where there is a contamination of hydrocarbons, petroleum products or similar.

3.5.1.5 The earth was contaminated before 1 January 1992 (s10(1) WRR Regulation)

A key criterion is demonstrating that the site was contaminated, with the hazardous contaminant, before 1 January 1992. This date is when Queensland's contaminated land framework was introduced.

The applicant must provide evidence that will enable the department to be satisfied that the land was contaminated before 1 January 1992. This evidence may include but not be limited to:

- a site history review including historical land uses,
- historical contamination reports,
- historical site photographs,
- historical aerial photographs,
- other relevant records that demonstrate that the earth was contaminated before 1 January 1992.

3.5.1.6 Is the contaminated earth being removed from a landfill cell as part of a significant community project? (s10(1) WRR Regulation)

An application may be made where the contaminated earth contains waste that is being removed from a landfill cell for the purposes of a significant community project. This generally refers to redeveloping landfills into community facilities where it may be necessary to remediate the site and remove earth and waste from a landfill cell.

The applicant must demonstrate that the project has an aesthetic, conservation, cultural or economic benefit to a local or regional community or the State. The project may either serve as an essential need for the community or a project that significantly improves the community's access to services. Examples include a school, sporting field, hospital, museum, or State or local government library.

In demonstrating that the removal of contaminated earth is for a significant community project, the applicant must provide details relating to the approved project including the type of project and benefits it will bring to the community.

3.5.1.7 Is the contaminated earth being removed from a landfill cell by or for a local government? (s10(1) WRR Regulation)

Earth containing waste that was disposed of to landfill before 1 January 1992 may be considered contaminated earth when removed from the land and disposed to a waste disposal site. This may only be approved as exempt from the waste levy in specific circumstances.

To be eligible the following must be demonstrated:

- a) The earth is to be removed from the land by or for a local government; **and**
- b) The earth contains waste that was disposed of to landfill before 1 January 1992 (whether or not disposal continued after that time); **and**
- c) The land is recorded in the EMR or CLR; **and**
- d) either of the following applies. The earth is to be removed—
 - a. for the purposes of remediating the contamination; **or**
 - b. for conducting or operating a resource recovery or transfer facility on the land and waste will no longer be disposed of as landfill at the land.

3.5.2 Waste disposal details

The applicant must provide the site name and address of the waste disposal site that is to receive the waste.

3.5.3 Exemption period sought

The approval period must reflect the period of time the contaminated earth is proposed to be removed from the site and disposed of at a waste disposal site. The maximum period of approval that may be granted is three years. To justify the approval period, it is recommended to provide supporting information such as a project timeline.

3.5.4 Quantity of exempt waste sought

Assessments of waste levy approvals for contaminated earth focus on the tonnage of exempt waste for the purpose of exemption from the waste levy. The quantity of waste (in tonnes) requested in the application must be consistent with the evidence that demonstrates the quantity of contaminated earth. Where the waste is recorded as cubic metres, the applicant is required to convert the waste volume to tonnes to enable the

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application to be assessed. The applicant must provide supporting information to demonstrate how the volume to tonnes conversion was carried out, including but not limited to:

- a) Description of soil type by an appropriately qualified person and a relevant density conversion table; and/or
- b) Soil density test results carried out in the field by an appropriately qualified person or carried out by an accredited laboratory.

3.5.5 Amendment of existing approval by agreement

If circumstances change after a contaminated earth exemption is granted, an approval holder may amend their approval by agreement between the department and the holder of the approval.

Amendment requests may include a new waste disposal site nominated to accept the approved exempt waste for disposal, an increase or decrease of the approved quantity of exempt waste, or extending the approval period. Please note where extending the approval period, it must not exceed three years beyond the original approval date. Amendment requests only apply to current approvals.

Amendment requests must include supporting information to the same standard that would be provided with a new application request as outlined in this guideline. For example, if the request is to increase the quantity of waste, the additional quantity must be demonstrated to be earth contaminated with a hazardous contaminant.

Please note, the effective date of the amendment is taken to be the date the decision is made. The effective date cannot be retrospective.

An approval holder may request an amendment to the approval by emailing the department via wastelevyapps@des.qld.gov.au requesting an amendment to an existing approval. The email should contain the necessary information to commence the amendment process.

4 Other considerations

4.1 Environmental Management Register or Contaminated Land Register

Further information regarding regulatory obligations in relation to making a notification of contaminated land or the removal of land from the EMR or CLR is available via the [Queensland Government website](#) or via email at PaLM@des.qld.gov.au.

4.2 Soil Disposal Permit

In order to remove contaminated soil for treatment or disposal from land listed in the EMR or CLR, a Soil Disposal Permit is required. A Soil Disposal Permit application is made under section 424 (as continued under section 739) of the *Environmental Protection Act 1994*. Further information in relation to circumstances where a Soil Disposal Permit is required and regulatory obligations is available via the [Queensland Government website](#) or via email at PaLM@des.qld.gov.au.

Please note that a waste levy exemption for contaminated earth may be applied for prior to obtaining a Soil Disposal Permit, however you will not be able to move the contaminated earth from the site to a waste disposal site and be eligible for the waste levy exemption without a Soil Disposal Permit.

5 Further Information

Further information regarding the waste levy can be found at www.qld.gov.au/waste-disposal-levy. If you have any further questions that relate to exempt waste or the waste levy, please contact the department via wastelevyapps@des.qld.gov.au.

6 Human Rights Compatibility

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this guideline, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment, Science and Innovation should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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Enquiries:

Levy Services

Department of Environment, Science and Innovation

Email: wastelevyapps@des.qld.gov.au

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