



End of waste code

Oyster shells (ENEW07278317)

Waste Reduction and Recycling Act 2011



Queensland
Government

Version history

| Version | Date | Description of changes |
|---------|---------------|--|
| 1.00 | 4 June 2018 | Original document |
| 1.01 | 28 March 2024 | Updated department name to reflect machinery of government changes and the definition of serious or material harm. |

Prepared by: Waste and Contaminated Land Assessment, Department of Environment, Science and Innovation

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1. Explanatory Statement

This End of Waste (EOW) code for oyster shells has been issued by the Department of Environment, Science and Innovation (the department) in accordance with sections 159 of the *Waste Reduction and Recycling Act 2011* (WRR Act).

This EOW code states when a waste becomes a resource and any relevant requirements and/or conditions for its use. It supports the vision of [Queensland's Waste Avoidance and Resource Productivity Strategy \(2014-2024\)](#), for Queensland to become a national leader in avoiding unnecessary consumption and waste generation by adopting innovative resource recovery approaches and managing all products and materials as valuable and finite resources.

If the waste is not being used in accordance with the relevant requirements and/or conditions of this EOW code, or another type of permit that allows for its use, it is considered a waste and must be disposed of appropriately at a facility that is lawfully able to receive the waste.

2. Guidance

2.1 Resource use versus Activity

An EOW code states when a waste stops being a waste including following any necessary processing or treatment.

A waste becomes a **resource** when it has been determined to meet the requirements of an EOW code. It may be necessary to treat or process the waste prior to that point. An Environmental Authority (EA) under the *Environmental Protection Act 1994* (EP Act) is required where an activity being undertaken triggers the threshold for any environmentally relevant activity (ERA). This means that treating or processing the waste to meet the resource quality criteria under the EOW code may require an EA under the EP Act if the activity meets the threshold for an ERA.

2.2 Resource versus Waste

A waste that has been considered a **resource** under an EOW code is considered a resource only for the purpose of the approved use(s). In the event a resource does not meet the requirements of the EOW code and/or is not used in accordance with the EOW code, it is deemed to be a waste and must be managed in accordance with waste management requirements under the EP Act and the WRR Act, and their subordinate legislation.

A resource, approved under an EOW code, is also deemed to be a waste when it is disposed of at a waste disposal facility, or if it is deposited at a place in a way that would, apart from its use approved under an EOW code, constitute a contravention of the general littering provision or the illegal dumping of waste provision under the WRR Act —when the depositing starts.

2.4 Failure to comply

Any **person** operating under this EOW code must comply with the relevant requirements and conditions of the EOW code. It is an offence to not comply with the relevant requirements and conditions, carrying a maximum penalty of 1665 penalty units for an individual and 8325 penalty units for a corporation¹.

¹ The value of a penalty unit is stated in the Penalties and Sentences Regulation 2015 (Qld).

Please refer to **Appendix A** of this EOW code for general obligations for all persons which includes the **resource users**.

2.5 Lawfulness of the activity

The issuing of this EOW code for the use of the **resource** does not warrant or imply the lawfulness of the activity under all legislation, or that approvals necessary under other legislation have or will be approved. It is the responsibility of the **registered resource producer** and **resource user** to identify and obtain all other approvals necessary for the relevant activities.

3. Period of this EOW code

This EOW code takes effect from **4 June 2018** and remains in force until it is cancelled, amended or suspended.

4. Waste to which this EOW code applies

This EOW code applies to oyster shells sourced from **oyster processing centres** and/or restaurants. The waste becomes a **resource** when the requirements and conditions under this EOW code are met.

5. Person to whom this EOW code applies

5.1 Registered resource producers of the resource

- a) Prior to operating under this EOW code, the producer of the **resource** must register with the **chief executive** by giving a notice in the approved form² that the **person** intends to become a **registered resource producer** for this EOW code; and
- b) A registered resource producer for this EOW code must comply with the stated registered resource producer requirements.

5.2 Resource users

- a) The **resource user** must only use the **resource** for a purpose allowed under this EOW code; and
- b) The resource user must comply with the stated conditions of use.

² The approved form, *Registered Resource Producer for an EOW code*, is available on the **chief executive's** website at www.des.qld.gov.au, use the search term ESR/2018/4082

6. Registered resource producer requirements

| | |
|---------|---|
| (1) | The registered resource producer must not use, sell or give away the resource unless it meets all of the following quality criteria: <ul style="list-style-type: none"> a) It is sourced from a facility that is not subject to quarantine restrictions under the <i>Biosecurity Security Act 2014</i> and its sub-ordinate legislations; b) It has been cleaned by using high pressure washers to remove all soft tissue; and c) It has been sterilised by either: <ul style="list-style-type: none"> i. drying in direct sunlight at greater than 18° Celsius for at least 4 months; or ii. boiling in water for at least 5 minutes followed by immersion in water at greater than 55° Celsius for at least 10 minutes. |
| (2) | In addition to meeting the quality criteria, the resource must not have any properties nor contain any other contaminants at concentrations which may cause environmental harm when used in accordance with this EOW code. |
| Records | |
| (3) | The following information must be recorded for each load of the resource transported to the site of use : <ul style="list-style-type: none"> a) origin of the resource; b) date of pick-up of the resource; c) location and date of delivery of the resource to the resource user; d) contact details for the person responsible for use of the resource at the site of use; and e) quantity of the resource supplied. |
| (4) | The registered resource producer must keep records of all requirements under this EOW code for a period of at least five (5) years and provide the records to the chief executive upon request and in the format requested. |

7. Conditions of use

| | |
|-----------------------------|---|
| Approved uses | |
| (1) | The resource can be used for the purpose of constructing structures designed to promote the settlement of oyster spat. |
| Final placement of resource | |
| (2) | The resource must be used generally in accordance with ' for construction ' plans that have been certified by a Registered Professional Engineer of Queensland . |
| (3) | The resource user must keep the following records in relation to the final placement of the resource: <ul style="list-style-type: none"> a) Copies of the certified 'for construction' plans; and b) Date and location (including GPS coordinates) where final placement occurred. |

| Records | |
|---|---|
| (4) | All records required by the conditions of this EOW code must be kept by the resource user for a period of not less than five (5) years and provided to the chief executive upon request and in the format requested. |
| Notification of emergencies, incidents and exceptions | |
| (5) | The resource user must report any breach of a condition of this EOW code to the chief executive as soon as practicable within 24 hours of becoming aware of the breach. |
| (6) | The resource user must keep records including full details of the breach and any subsequent actions taken. |

8. Definitions

Words and phrases used throughout this EOW code are defined below. Where a definition for a term used in this EOW code is sought and the term is not defined within this EOW code the definitions provided in the relevant legislation shall be used.

‘**chief executive**’ means the Department of Environment, Science and Innovation or its successor.

‘**contaminants**’ (as defined in Section 11 of the *Environmental Protection Act 1994*), unless authorised under this EOW code means —

- a) a gas, liquid or solid; or
- b) an odour; or
- c) an organism (whether alive or dead), including a virus or parasite or a pathogen; or
- d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
- e) a combination of contaminants.

‘**emergency(ies)**’ means a situation where either human health or safety is threatened, or serious or material **environmental harm** has been or is likely to be caused; and urgent action is necessary to protect the health or safety of **persons**, or prevent or minimise the harm, or rehabilitate or restore the environment because of the harm.

‘**environmental harm**’ means environmental harm as defined in Chapter 1 of the *Environmental Protection Act 1994*.

‘**for construction’ plans**’ mean plans that show where the works (e.g. installation of **oyster reef restoration units**) are to be located and details of what the works are.

‘**load**’ means the volume of resource put in or on something for conveyance or transportation, carried at one time. A truck and trailer carrying the resource is considered as one load as well as multiple bins travelling by rail. Where the resource is transported via conveyor systems, information should be recorded on a daily basis until the transfer ceases.

‘**oyster processing centre(s)**’ means a facility and/or equipment where harvested oysters are converted into marketable form by some special process, which includes but is not limited to cleaning, washing, sorting, shucking, handling, treating or packaging the oysters.

‘**oyster reef restoration units**’ mean structures designed to promote settlement of oyster spat.

'person(s)' means an individual or a corporation.

'Registered Professional Engineer of Queensland' (RPEQ) means an engineer who is registered by the Board of Professional Engineers Queensland to provide professional engineering services in Queensland as required under the *Professional Engineers Act 2002* (Qld).

'registered resource producer(s)' means a **person** who has registered with the **chief executive** to use, sell or give away the **resource** to be used under this EOW code.

'records' include breach notifications, written procedures, analysis results, monitoring reports and monitoring programs required under the requirement and conditions of this EOW code.

'resource(s)' means oyster shells which meet the quality criteria specified in this EOW code.

'resource user(s)' means a **person** who uses the **resource** for the use approved under this EOW code and in such a manner which does not cause any **environmental harm**, and includes the producer who uses the resource.

'site(s) of use' means the relevant location or locations where the **resource** is used in accordance with this EOW code.

- END -

Appendix A —General obligation for all persons

This appendix is not intended to provide a comprehensive assessment of all obligations under Queensland law. It provides some general information and persons are encouraged to familiarise themselves with all requirements related to their specific operation.

Responsibilities under the *Environmental Protection Act 1994*

All persons within the State of Queensland must also meet their obligations under the *Environmental Protection Act 1994*, and the regulations made under that Act.

General environmental duty

Section 319 of the *Environmental Protection Act 1994* states that we all have a general environmental duty. This means that we are all responsible for the actions we take that affect the environment. We must not carry out any activity that causes or is likely to cause environmental harm unless we take all reasonable and practicable measures to prevent or minimise the harm. To decide what meets your general environmental duty, you need to consider:

- the nature of the harm or potential harm
- the sensitivity of the receiving environment
- the current state of technical knowledge for the activity
- the likelihood of successful application of the different measures to prevent or minimise environmental harm that might be taken
- the financial implications of the different measures as they would relate to the type of activity.

It is not an offence not to comply with the general environmental duty. However, maintaining your general environmental duty is a defence against the following acts:

- (a) an act that causes serious or material environmental harm or an environmental nuisance
- (b) an act that contravenes a noise standard
- (c) a deposit of a contaminant, or release of stormwater run-off, mentioned in section 440ZG.

More information is available on the Department of Environment, Science and Innovation (DESI) website www.des.qld.gov.au.

Some relevant offences under the *Environmental Protection Act 1994*

General environmental duty

Section 319 of the *Environmental Protection Act 1994* (EP Act) states that we all have a general environmental duty. This means that we are all responsible for the actions we take that affect the environment. We must not carry out any activity that causes or is likely to cause environmental harm unless we take all reasonable and practicable measures to prevent or minimise the harm. To decide what meets your general environmental duty, you need to consider:

- the nature of the harm or potential harm

- the sensitivity of the receiving environment
- the current state of technical knowledge for the activity
- the likelihood of successful application of the different measures to prevent or minimise environmental harm that might be taken
- the financial implications of the different measures as they would relate to the type of activity.

More information is available on the Department of Environment, Science and Innovation website www.des.qld.gov.au.

Causing serious or material environmental harm (sections 437–39)

Material and serious environmental harm are defined in sections 16 and 17 of the EP Act. Material environmental harm is when the harm is not trivial or negligible in nature. Serious environmental harm is harm that is irreversible, of a high impact or widespread, or that is caused to an area of high conservation value or special significance. Damages, or costs required to rehabilitate the environment, of over thresholds amounts in the EP Act also constitutes material or serious environmental harm. Serious or material environmental harm excludes environmental nuisance.

Causing environmental nuisance (section 440)

Environmental nuisance is unreasonable interference with an environmental value caused by aerosols, fumes, light, noise, odour, particles or smoke. It may also include an unhealthy, offensive or unsightly condition because of contamination.

Depositing a prescribed water contaminant in waters (section 440ZG)

Prescribed contaminants include a wide variety of contaminants listed in Schedule 9 of the *Environmental Protection Act 1994*.

It is your responsibility to ensure that prescribed contaminants are not left in a place where they may or do enter a waterway, the ocean or a stormwater drain. This includes making sure that stormwater falling on or running across your site does not leave the site contaminated. Where stormwater contamination occurs you must ensure that it is treated to remove contaminants. You should also consider where and how you store material used in your processes onsite to reduce the chance of water contamination.

Placing a contaminant where environmental harm or nuisance may be caused (section 443)

A person must not cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause serious or material environmental harm or environmental nuisance.

Some relevant offences under the *Waste Reduction and Recycling Act 2011*

Littering (section 103)

Litter is any domestic or commercial waste and any material a person might reasonably believe is refuse, debris or rubbish. Litter can be almost any material that is disposed of incorrectly. Litter includes cigarette butts and drink bottles dropped on the ground, fast food wrappers thrown out of the car window, poorly secured material from a trailer or grass clippings swept into the gutter. However, litter does not include any gas, dust, smoke or material emitted or produced during, or because of, the normal operations of a building, manufacturing, mining or primary industry.

Illegal dumping of waste (section 104)

Illegal dumping is the dumping of large volumes of litter (200 litres or more) at a place. Illegal dumping can also include abandoned vehicles.

Failure to comply with EOW code (section 158)

A registered resource producer for an EOW code must not use, sell or give away the resource unless the registered resource producer complies with the requirements of the EOW code relating to the resource.

A person, other than a registered resource producer, must not use a resource in a way, or for a purpose, that does not comply with an EOW code for the resource.

Approved:

23 April 2018

Enquiries:

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