

**To: Department of Water and Environmental Regulation,
Western Australia**

**Re: Closing the Loop – Waste Reforms for a Circular
Economy**

18 May 2020

Introduction

AMEC appreciates the opportunity to be consulted on this proposal and has been active in engaging with the Department on this matter to articulate the real and potential operational problems that will arise for the mining and exploration industry.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 275 mining and mineral exploration companies across Australia, the majority of which have major project interests in WA.

The mining and mineral exploration industry make a critical contribution to the Western Australian economy, employing more than 125,000 workers. These companies collectively paid over \$6B in royalties and generated more than \$107B in mineral exports.

In 2018/19, WA mining and mineral exploration companies invested \$2.3B to discover the mines of the future.

SPECIFIC COMMENTS ON THE CONSULTATION PAPER

We welcome the review and support initiatives aimed at streamlining, creating more efficient and effective practices, and in removing duplication. We recognise the foundation of a circular economy creates a strong domestic supply of high-quality recycled materials for Western Australia.

When implementing policies great care will need to be taken to ensure that there are no unintended consequences. This is particularly important when considering amending definitions and expanding licensing requirements.

If you are a waste stakeholder, what is your preferred option for the landfill licensing categories under the EP Act? Please provide supporting information where possible to support your response.

The proposals outlined in Option 2 (9.3.2 – Three landfill categories – Waste Disposal to Land) and Option 3 (9.3.3 – Single landfill category – Waste Disposal to Land) require more information about the time and cost impacts on industry prior to AMEC supporting a preferred option.

AMEC notes there are significant differences in the way landfills are classified between jurisdictions, and the classes of landfill that are permitted. While all States have similar objectives, the inconsistent regulatory programs and guidance result in different levels of performance and the lack of national harmonisation which creates an uncertain regulatory environment that undermines the ability of private investors to develop recycling infrastructure. AMEC queries the application of remote and regional levies, and the criteria discerning between the different definitions. Given the large geographic distances waste could be transported within Western Australia, a more nuanced approach is required.

The proposal to streamline from five to three landfill categories (Option 2) expands the licensing categories to include waste disposal activities that weren't previously included. This proposed option is inconsistent with other jurisdictions. The potential financial and time impacts for industry being required to obtain licences which aren't currently required under the existing five landfill licensing categories need to be clearly outlined.

The proposal to merge the five landfill categories into one single category (Option 3) would require the licensing of other waste disposal to land activities which are not currently included. This method of classification is currently used in South Australia. This option supports the objective to streamline the process and remove duplication. For example, mining wastes have been indicated as an exclusion under Option 3 but are still subject to licensing and regulations under other licensing categories. The SA EPA Landfill Guidelines provide guidance and management requirements for landfill based on the capacity and site conditions, with the SA Government reporting enhanced landfill management practices around the state since implementation in 2007¹.

In adherence with the objectives of the Paper, the preferred option should streamline the current processes and promote national harmonisation to provide consistency, clarity and compliance with the guiding objectives, without increasing the financial burden on industry.

Should Category 89 landfills be required to be licensed under the EP Act to improve the management of environmental and health risks, or for the effective implementation of the waste levy? Please provide evidence where possible to support your response.

AMEC is concerned about the impact the unintended consequences of a change in the definition of 'waste' may have on activities under the *Mining Act 1978* and its application in Western Australia.

The Department's strategy to undertake compliance and enforcement programs to monitor illegal waste disposal in WA is considered to be less stringently applied than other States. Enforcement of waste disposal regulations is required so compliant businesses are not financially disadvantaged. As demonstrated below, WA is comparatively behind in its legislation and waste tracking ability, and prosecutions do not align with other States.

¹https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/WasteandRecycling/Report

- From 2019-20 in WA prosecutions for Unauthorised Discharge of waste (Illegal Dumping) had a maximum penalty of \$7,000 however majority of fines ranged from \$700-\$2,500².
- In NSW a \$15,000 fine was issued in April 2020 for allegedly storing waste without an environment protection licence³.
- A 2017 survey of Construction and Demolition (C&D) waste recyclers conducted by Murdoch University found the Department has insufficient resources to regulate operations with appropriate licences and correct procedures⁴.
- The NSW Government is deterring illegal waste activities by implementing GPS tracking systems for all waste transport vehicles
- The Victorian Government is creating a Waste Crime Prevention Inspectorate to target waste crime and provide \$71.4M to help stop illegal dumping and stockpiling

There is a limited information outlining the repercussions for failure to adhere to waste stockpiling guidelines and illegal waste disposal activities. Our members, representing Industry, have not seen significant investigation or prosecution for this type of activity in Western Australia. Perceptions of limited enforcement undermines the business strategy of companies who comply. It allows competitors to provide “waste services” to clients, whereby waste is illegally stockpiled and not subject to the waste levy, increasing environmental and health risks to the State.

The current application of the Landfill Levy in Western Australia is questioned by the waste industry. Substantial revenue is generated for the State Government by the waste levy, but it is not publicised how much of this revenue serves its intended use of supporting a range of waste and environmental purposes, and how much boosts consolidated state revenue. In response to COVID-19, the WA Government announced a freeze on the waste levy in 2020-21 to ease pressure on Local Government budgets⁵. Industry is concerned with two planned large-scale waste to energy plants opening in the next two years, in addition to the freeze on the current levy rates, that the WA Government will impose levies on other waste facilities to make up the shortfall in revenue.

As a market mechanism, the waste levy requires a range of complementary resources including land use planning, education, compliance, regulation and incentives to recover waste, to ensure effective implementation. Industry believes the reliance on the landfill levy to drive change is outdated and does not correspond in waste reduction. AMEC supports the need to ensure levies are appropriately designed and implemented so there are no perverse outcomes for Industry.

² <https://www.der.wa.gov.au/our-work/enforcement/summary-of-prosecutions>

³ [https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200402-cleanaway-fined-\\$15000-for-storing-waste-without-a-licence](https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200402-cleanaway-fined-$15000-for-storing-waste-without-a-licence)

⁴ <https://www.perthnow.com.au/news/wa/was-broken-waste-policy-triggers-dumping-stockpiling-ng-eb1fd10fe918745520304d51225a6aec>

⁵ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/05/100-million-dollar-short-term-lending-facility-to-support-local-governments-and-universities-through-COVID-19.aspx>

Should operators of Category 66 landfill premises that accept hazardous wastes be liable to pay the waste levy as “waste disposal premises”?

AMEC opposes the Department’s consideration that premises who receive hazardous waste should be liable to pay the waste levy under Options 2 and 3, instead of supporting an exemption for repository facilities. Infrastructure designed to reduce hazardous waste and its associated environmental and health risks require incentives rather than levies to continue operating in the most sustainable and risk adverse manner. In NSW waste facilities only require to be licensed for the storage, treatment, processing or sorting of hazardous waste are exempt from the waste levy. In Queensland exemptions by application are applicable to waste facilities who receive some types of earth contaminated with a hazardous contaminant from land listed on the environmental management register or contaminated land register.

In WA, Tellus’ Sandy Ridge Facility for example, was selected, designed and planned for operation to remove Class V waste from the biosphere over geological time. The planned geological repository relies mainly on geological barriers to provide containment in the long term, reducing the risk posed by hazardous waste. In the case of Sandy Ridge, the dry kaolin clay bed will ensure the permanent isolation of wastes from the environment with no ongoing monitoring required as they are ‘passively safe’⁶. There is no ongoing potential liability, allowing waste customers to receive a permanent isolation certificate, and the geological repository presents opportunities for future recycling or recovery of valuable materials.

AMEC supports a waste levy exemption for repositories.

The current proposals are unclear as to how the levy mechanism will be applied when waste is mixed (across classes of waste), and what the levy rate will be based on if there is insufficient data.

Please provide feedback on the proposed approach for Category 53 (fly ash disposal) outlined in section 9.1.5 – Should fly ash disposal be regulated as a separate process, or should it be regulated as a licensed landfill? Please provide information where possible to support your response.

AMEC recommends that until Federal best-practice regulations and a substantial initiative to re-use and recover fly ash is established, fly ash disposal should remain regulated as a separate process to licensed landfills, in line with international practices. Despite the abundance of viable fly ash in Australia, the utilisation rates are among the worst in the world and regulation of ash dumps differs by jurisdiction in Australia. Only 44% of fly ash is saved from ash dumps and only half of that is recycled into by-products like concrete⁷.

In Victoria, ash ponds are classified as landfill and are scheduled premises under the *Environment Protection (Scheduled Premises) Regulations 2017*. A review of the 16 largest coal ash dumps across

⁶ https://tellusholdings.com/wp-content/uploads/2019/06/TSR-5-40-20-05-DC-WD-What-is-Geological-Repository-Fact-Sheet_v1_20-11-2016.pdf

⁷ <https://www.abc.net.au/news/2019-03-10/coal-ash-has-become-one-of-australias-biggest-waste-problems/10886866>

Australia identified only the two facilities in Victoria required a bond or financial assurance on ash dumps. The Queensland and NSW's respective environmental protection bodies do not impose financial assurances on ash dumps. Further, the majority of facilities in Queensland and one WA facility had ash management plans in place, to protect Australian communities from bearing the cost burden of ash dumps, but management plans are not required by other States. The Victorian EPA noted there is no best practice regarding the management of fly ash and its disposal. Due to the lack of standardised Category 53 regulations, fly ash disposal should remain regulated as a separate process.

For further information contact:

Neil van Drunen

or

Samantha Panickar

Manager, WA, SA, NT & Industrial Policy

Policy & Research Officer

AMEC

AMEC

0407 057 443

08 9320 5150