

Owner's guide to lawful disposal of construction and demolition waste

This guide is designed to assist procurement officers and construction project managers.

It provides tips on how to reduce the risk of unlawful or fraudulent behaviour by contractors and subcontractors during the tender, contract and project management phases of construction and demolition (C&D) projects.

Who is responsible for lawful disposal of C&D waste?

Waste generated from construction and demolition sites, including soil, contaminated soil and demolition waste, must be disposed of or re-used lawfully.

The **owner of the waste** and the **waste transporter** may both be guilty of an offence when waste is transported to a place that cannot lawfully be used as a waste facility.

The **owner of waste** includes, in relation to waste that has been transported, the person who was the owner of the waste immediately before it was transported under Section 143(4) of the *Protection of the Environment Operations Act 1997* (POEO Act).

POEO Act offences and fines include the following:

Unlawful transporting or depositing of waste

Section 143 of the POEO Act makes it an offence to transport waste to a place that cannot lawfully accept it. Penalties apply for doing the wrong thing.

**Maximum penalty: \$1,000,000 (corporation)
\$250,000 (individual)**

Defence – owner of waste

Section 143(3) of the POEO Act provides a defence for the owner of the waste if the owner did not transport the waste and establishes:

- a. that the commission of the offence was due to causes over which the owner had no control, and
- b. that the owner took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Tip 1: Know who you are doing business with

The NSW Environment Protection Authority (EPA) strongly recommends checking the legitimacy and compliance of businesses you contract work to.

Consider using the [ABN Lookup](#) and [EPA Public Register](#) services. Both are free online public record searches. Keep a record of your search results.

[ABN Lookup](#)

www.abr.business.gov.au

Any company / individual name can be searched to find out:

- if the business exists
- when the business was established and if it is still operating
- historical details about the business
- the main business location, and
- any trading names associated with the business.

ABN search results may also include a link to information held by the Australian Securities and Investments Commission (ASIC) about the business.

Note: It is possible for an ABN to be active but the business itself to be deregistered. The ASIC record will show whether a business is registered or not.

EPA Public Register

Environment protection licence and notices, including penalty notices, can be searched at:

www.epa.nsw.gov.au/prpoeoapp

Prosecutions and civil proceedings can be searched at:

<https://app.epa.nsw.gov.au/casesapp/searchcases.aspx>

The EPA keeps a public register of all issued licenses, notices (including penalty notices), enforceable undertakings and prosecutions. Records can be searched by a range of criteria, including an individual or company name. Any records returned by a search can be opened to obtain the details. For example:

- If a contractor claims to have an EPA licence, this may be verified by searching the public register and the actual licence document can be accessed.
- A penalty notice record can be opened to obtain the description of the offence and the date the offence was committed.
- A prosecution record can be opened to identify the offence, where and when the individual or corporation was convicted and the penalty imposed.

Tip 2: Set clear expectations about lawful waste transport and disposal

The EPA strongly recommends waste owners set a clear expectation with contractors and subcontractors that lawful transport and disposal of waste is a condition of doing business.

The waste owner often ensures waste transport and disposal price and frequency of service is agreed to and known. The EPA recommends waste owners also ensure the waste leaving their site is being transported to a place that can lawfully receive it.

Tip 3: Have a written agreement or contract

The EPA strongly recommends waste owners:

- enter into a written agreement or contract with the contractor that establishes waste transport and disposal requirements

- ensure any subcontractual arrangements between the primary contractors and their subcontractors are in accordance with the agreement or contract
- consider the tips provided in this document when developing the written agreement or contract with the contractor
- document key actions and retain copies of relevant documents.

Tip 4: Know where your waste is going

Consider what procedures can be put in place before, during and after transportation to ensure you know:

- where the waste is being transported to; and
- that the receival site is permitted to receive the waste.

For example, you could obtain a copy of the development consent and/or environment protection licence of the receival site(s). These documents typically contain the site address, the name of the site operator and the types of waste the site can receive.

There are only very limited circumstances where a receiving site can lawfully receive waste and not hold an environment protection licence or a development consent. In these circumstances, the waste owner could consider requiring an approved notice.

The approved notice is completed by the landowner / occupier stating the receiving site can lawfully receive the waste. This approved notice should contain the address of the facility, the name of the owner / occupier of the site and the types of waste the site can receive. With this information, the waste owner could make further checks if necessary.

The form of approved notice to be used in the absence of a licence or development consent is available from the EPA's [website](#), titled Notice under section 143 of the POEO Act 1997.

Tip 5: Get proof of lawful disposal before paying

The EPA recommends waste owners consider requiring proof the waste was lawfully disposed of before paying the contractor or subcontractor for

transport or disposal of waste. If the contractor is made aware of this requirement, it becomes in the contractor's best interest to ensure the waste is lawfully disposed of.

The EPA recommends checking the validity of documentation provided by the contractor to ensure:

- the total amount of the waste removed was disposed of lawfully, and
- the disposal location(s) are the same one(s) previously advised by the contractor.

This documentation is often disposal dockets that identify the receiving facility location along with the date the waste was received and the amount of waste received.

Private landowners may be permitted to lawfully receive certain waste types. They are unlikely to provide waste disposal dockets. In these instances, the EPA recommends waste owners require a statutory declaration to confirm the place can lawfully be used as a waste facility for that waste. This statutory declaration would be prepared and given by the private landowner to the waste transporter on receipt of the waste. The EPA recommends waste owners obtain and check the content and validity of any such statutory declaration provided.

The EPA strongly recommends waste owners track and record all waste as it leaves the site, so disposal dockets can be checked against the waste owners dispatch records.

Tip 6: Notify the EPA immediately if you know or suspect something is not right

Some of the signs there may be potential issues about the accuracy of the information provided by a contractor are:

- an inability or unwillingness of a contractor to provide evidence of lawful disposal
- a sudden and unexplained change in the appearance of disposal dockets
- the customer name and/or ABN detailed on the disposal dockets produced by the receiving facility are not the same as the contractor
- multiple disposal dockets having the same docket number, and
- documents that have had details altered.

The EPA recommends waste owners address any concerns with their contractor or subcontractor.

Under section 144AA of the POEO Act, it is an offence for a person to provide false and misleading information about waste to another person in the course of dealing with the waste, being information that is false or misleading in a material respect.

The EPA must be contacted as soon as possible after reasonably suspecting or becoming aware of unlawful waste transport or disposal.

References

The form of approved notice referred to in Tip 4 can be found at www.epa.nsw.gov.au/licensing-and-regulation/legislation-and-compliance/notices-and-other-reg-docs

NSW Environment Protection Authority

Email: info@epa.nsw.gov.au

Website: www.epa.nsw.gov.au

ISBN 978 1 922260 81 9 | EPA 2019P1761

August 2019

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This guide does not constitute legal advice. Anyone involved in the procurement of waste removal services as an owner, transporter or receiver of waste should give consideration to obtaining appropriate legal advice.