



New EPA Resource Recovery Orders Seek Fines of up to \$1,000,000.00 for Developers, Builders and Landowners.

Read on to see how you can protect yourself from hefty fines and penalties ...

A new order has been issued by the Environment Protection Authority (EPA) under section 286A of the Protection of the Environment Operations Act 1997 (POEO Act). It imposes a set of requirements that must be met by a supplier of acid sulfate soil (ASS). ASS refers to naturally occurring soil or organic earth substrate containing iron sulphides, which may oxidize upon excavation and release sulfuric acid and toxic metals.

Who is a Supplier?

A supplier is categorised as any person who supplies ASS, that has been generated, processed or recovered by that person or organisation. Section 143 of the POEO Act provides that the following parties can be held liable under this Order:

1. The **owner of the waste**: that is, the person or entity who was the owner of the waste immediately before it was transported can be held liable.
2. The **waste transporter**: being any person or entity who transports waste to a place that cannot lawfully be used as a waste facility for that waste. This includes the driver, the owner of the waste, and the owner of the vehicle used to transport it.

What are the obligations of a supplier?

ASS investigation requirements:

A supplier must undertake an ASS investigation in accordance with National Guideline A and National Guideline B, prior to the removal of any ASS from the premises. This includes testing for the net acidity and engaging an expert to prepare a report confirming safe levels.

Preparation of Acid Sulfate Soil Management Plan (ASSMP) and Proof of Performance (POP) Trial:

The supplier must also engage an environmental practitioner to prepare and keep a copy of the ASSMP for a minimum of six years. A POP trial is required to ensure that the ASS can be treated to a compliant standard before supplying.

To undertake a POP trial the supplier must prepare a treated stockpile up to a nominated volume in accordance with the treatment method and requirements of the ASSMP, and have an environmental practitioner complete the process of testing.

After three consecutive treated stockpiles have been tested and the environmental practitioner confirms in writing those test results are compliant, the supplier may utilise the stockpile in accordance with the order.

If a treated stockpile does not comply with the chemical requirements the supplier:

- must segregate any hotspot from the treated stockpile, label the segregated hotspot as non-compliant waste and store it separately from the remainder of the treated stockpile; and
- may either re-treat the hotspot, dispose of the hotspot to a place that can lawfully accept it, or retain the hotspot on the premises if it is a non-licensed premises, subject to having lawful authority.

This involves engaging an environmental practitioner to prepare a hotspot segregation report.

Validation Report

Prior to supplying ASS that has undergone treatment, the supplier must obtain and keep a copy of the validation report from the environmental practitioner for every treated stockpile, to ensure its safe use.

Information to be Given to a Consumer

Prior to on selling the soil, the supplier must provide a written statement of compliance to the consumer.

This must include:

- a certification that all the requirements set out in this order have been met with respect to a treated stockpile;
- the suppliers name (and ACN if a corporation), address and contact details;
- all validation reports;
- if required, the Expert compliance report; and
- the unique stockpile identifier, laboratory reports, chain-of-custody documentation, sample receipts.

At the time of supplying ASS, a supplier must record supply information and keep a written record of related documents for at least six years. The supplier must make any documents available to the EPA and the consumer of the ASS upon request.

Who is Exempt?

Subject to the conditions of this exemption, the EPA exempts each consumer from the order where their actual or intended application of ASS to land is as engineering fill or for use in earthworks at the premises.

Fines and Penalties

The POEO Act holds that a maximum penalty for corporations who do not comply with the legislative order, can reach up to \$1,000,000. Individuals who breach their obligations could be faced with fines up to \$250,000.

How can you protect yourself?

Developers: include clauses in your D&C contracts that hold builders and their subcontractors accountable in complying with the new waste management order. This must cover all reporting and waste management obligations. Also ensure indemnity provisions are in place to protect yourself if penalties or fines are imposed where a builder or their sub-contract is not compliant.

Builders and contractors: enter into a written agreement with your sub-contractors (particularly those transporting your waste), enforcing compliance with the legislation and orders.

Track where your waste is going. It is extremely important that you understand where your waste ends up, preventing unknown or hidden breaches of the POEO Act.

Obtain proof that your contractors have lawfully disposed of your construction waste, before finalising payment; after this, it may be harder to track.

Leave the legal to the lawyers. Engaging an expert team like Construction Legal, allows you to focus on the construction, while we keep you up to date of your obligations, preventing mistakes which could cost you later.

More information

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