Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014

The Downer recovered aggregate and sand exemption August 2025

Record Number: SRROE-127

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Introduction

This exemption:

- is issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation); and
- exempts a consumer of Downer recovered aggregate and sand from certain requirements under the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the application of that waste to land, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the Downer recovered aggregate and sand order August 2025'.

1. Waste to which this exemption applies

1.1. This exemption applies to Downer recovered aggregate and sand that is, or is intended to be, applied to land as a road base, or as an asphalt matrix within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities.

1.1. Downer recovered aggregate and sand means aggregate and sand that:

1.1.1. has been collected from street sweepings, stormwater treatment devices or stormwater management systems, and hydro-excavated soils.

1.1.2. has been processed at the Downer EDI Works Pty Ltd (ACN 008 709 608) Reconomy Rosehill facility located at 9 Devon Street, Rosehill NSW 2142, Environmental Protection Licence (EPL 21611) to remove other wastes;

1.1.3. does not contain asbestos, acid sulphate soils, potential acid sulphate soils or sulfidic ores and Per- and Polyfluroalkyl Substances (PFAS).

2. Persons to whom this exemption applies

2.1. This exemption applies to any person who applies, or intends to apply, Downer recovered aggregate and sand to land as set out in 1.1.

3. Duration

3.1. This exemption commences on the date of issue and is valid until 23 August 2027 or until revoked by the EPA by notice in writing.

4. Revocation

4.1. 'The Downer recovered aggregate and sand exemption July 2023' which commenced on 27 July 2023 is revoked from 21 August 2025.

5. Premises to which this exemption applies

5.1. This exemption applies to the premises at which the consumer's actual or intended application of Downer recovered aggregate and sand to land is carried out.

6. Exemption

6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the POEO Act and the Waste Regulation in relation to the consumer's actual or intended application of Downer recovered aggregate and sand to land within the road corridor for public road related activities include road construction, maintenance and installation of road infrastructure facilities:

- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 and 42 of Schedule 1 of the POEO Act;
- Part 4 of the Waste Regulation;
- section 88 of the POEO Act; and
- clause 109 and 110 of the Waste Regulation.

6.2. The exemption does not apply in circumstances where Downer recovered aggregate and sand is received at the premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

7. Conditions of exemption

The exemption is subject to the following conditions:

7.1. At the time the Downer recovered aggregate and sand is received at the premises, the material must meet all chemical and other material requirements for Downer recovered aggregate and sand which are required on or before the supply of Downer recovered aggregate and sand under 'the Downer recovered aggregate and sand order August 2023'.

7.2. The Downer recovered aggregate and sand can only be applied to land as a road base, or as an asphalt matrix within the road corridor for public road related activities including road construction, maintenance and installation of road infrastructure facilities.

7.3. The Downer recovered aggregate and sand must not be used for landscaping purposes.

7.4. The consumer must keep a written record of the following for a period of six years:

- the quantity of any Downer recovered aggregate and sand received; and
- the name and address of the supplier of Downer recovered aggregate and sand received.

7.5. The consumer must make any records required to be kept under this exemption available to authorised officers of the EPA on request.

7.6. The consumer must ensure that any application of Downer recovered aggregate and sand to land must occur within a reasonable period of time after its receipt.

8. Definitions

In this exemption:

application or apply to land means applying to land by:

- spraying, spreading or depositing on the land;
- ploughing, injecting or mixing into theland; or
- filling, raising, reclaiming or contouring the land.

asphalt matrix means the solid material typically comprising of sand, aggregates and similar materials bound together with bituminous and/or other similar binders.

consumer means a person who applies, or intends to apply, Downer recovered aggregate and sand to land.

PFAS means per- and polyfluoroalkyl substances specifically related to Perfluorooctane sulfonate ('PFOS'), perfluorooctanoic acid ('PFOA'), and perfluorohexane sulfonate ('PFHxS') where the sum of the concentrations of PFOS + PFHxS, and PFOA are more than the laboratory limit of reporting of 5 µg/kg.

public roads means:

(a) any road that is opened or dedicated as a public road, whether under the *Roads Act 1993* (the Roads Act) or any other act or law, and

(b) any road that is declared to be a public road for the purposes of the Roads Act.

public road infrastructure facilities means:

(a) tunnels, ventilation shafts, emergency accessways, vehicle or pedestrian bridges, causeways, road-ferries, retaining walls, toll plazas, toll booths, security systems, bus lanes, transit lanes, transitways, transitway stations, rest areas and road related areas (within the meaning of the *Road Transport (General) Act 2005*), and

(b) associated public transport facilities for roads used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*, and

(c) bus layovers that are integrated or associated with roads (whether or not the roads are used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*), and

(d) traffic control facilities (as defined by the *Transport Administration Act 1988*), Transport for NSW road safety training facilities and safety works.

road corridor means land that is used for the purposes of a road or road infrastructure facilities or for maintaining or constructing a road or road infrastructure facilities and that is owned or managed by Transport for NSW or council.

SIGNATURE
Karen Marler
Director Technical (Chemicals, Land and Radiation)
Environment Protection Authority
(by delegation)

Issue date: 21 August 2025

Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption. The current version of this exemption will be available on www.epa.nsw.gov.au

In gazetting or otherwise issuing this exemption, the EPA is not in any way endorsing the use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this exemption are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this exemption nor the accompanying order guarantee that the environment, human health or agriculture will not be harmed.

The consumer should assess whether or not Downer recovered aggregate and sand is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

Regardless of any exemption provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site(s).

The receipt of Downer recovered aggregate and sand remains subject to other relevant environmental regulations in the POEO Act and the Waste Regulation. For example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the special requirements for asbestos waste (Part 7 of the Waste Regulation), regardless of having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

Failure to comply with the conditions of this exemption constitutes an offence under clause 91 of the Waste Regulation.