



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEALS IN OBJECTION TO THE CONDITIONS OF LICENCE**

**LICENCE NUMBER L7751/2001/7  
BUCKINGHAM ROAD INERT LANDFILL  
LOT 1 ON DIAGRAM 92436,  
326 BUCKINGHAM ROAD,  
JELCOBINE, SHIRE OF BROOKTON**

**PROPONENT: STEG WASTE MANAGEMENT PTY LTD**

Appeal Numbers 110-112 of 2014

**July 2014**

## Appeal summary

This report relates to three appeals in objection to the conditions applied by the Department of Environment Regulation (DER) to Licence L7751/2001/7 relating to the operation of a Class I inert landfill in Jelcobine, Shire of Brookton. Tyres are the only type of waste permitted to be accepted for burial at the premises.

Appellants raised concerns that the continued disposal of used tyres to landfill amounts to a loss of a reusable/recyclable resource and that the environmental, social and economic benefits of reusing/recycling used tyres are well documented and will not be realised in Western Australia if used tyres continue to be disposed of to landfill. The appellants submitted that the licencing of landfill facilities to accept used tyres as waste risks the viability of newly established recycling facilities in Western Australia which depend directly on the availability of waste tyres for recycling at commercial rates. The appellants also raised other matters which do not relate to the conditions of the licence.

The DER advised that previous experience with tyre recycling businesses in Western Australia has indicated that tyre recycling is financially marginal and that the failure and closure of previous tyre recycling businesses has resulted in an increase (to problem levels) of stockpiling and illegal dumping. The DER considers the availability of some alternative disposal options reduces the risk of problems occurring in the future.

The regulatory regime established under Part V Division 3 of the *Environmental Protection Act 1986* is aimed at ensuring that emissions and discharges from specific prescribed premises meet acceptable standards. The DER advised it considers the conditions of the licence are appropriate to prevent, control and abate potential emissions and discharges resulting from the burial of tyres in a Class I inert landfill, the most significant of which is dust, and that it considers the buried tyres are managed in an environmentally acceptable manner and do not pose a fire risk.

The DER advised it is reviewing existing information on used tyres in Western Australia and monitoring options for the management and recycling of used tyres across the State following the recent launch of the national voluntary Tyre Product Stewardship Scheme for used tyres and the establishment of Tyre Stewardship Australia to administer the scheme. The operation of the Exclusion Zone and possible regulatory and non-regulatory options for managing used tyres will be considered as the industry scheme matures.

### Recommendation

For the reasons stated in this report and consistent with the advice of the DER, it is recommended that the appeals are allowed to the extent that the licence is amended to identify 'soil excavated on the premises or Clean Fill' as the cover material at the prescribed premises. No amendments to the waste acceptance criteria in the licence are considered necessary at this time.

## INTRODUCTION

This report relates to appeals lodged by the Australian Tyre Recyclers Association (110/14), the Australian Council of Recycling (111/14) and Tyrecycle Pty Ltd (112/14) (the appellants) in objection to the conditions applied by the Department of Environment Regulation (DER) to Licence L7751/2001/7 (the licence) relating to the operation of STEG Waste Management Pty Ltd's (the licence holder) inert landfill in Jelcobine, Shire of Brookton.

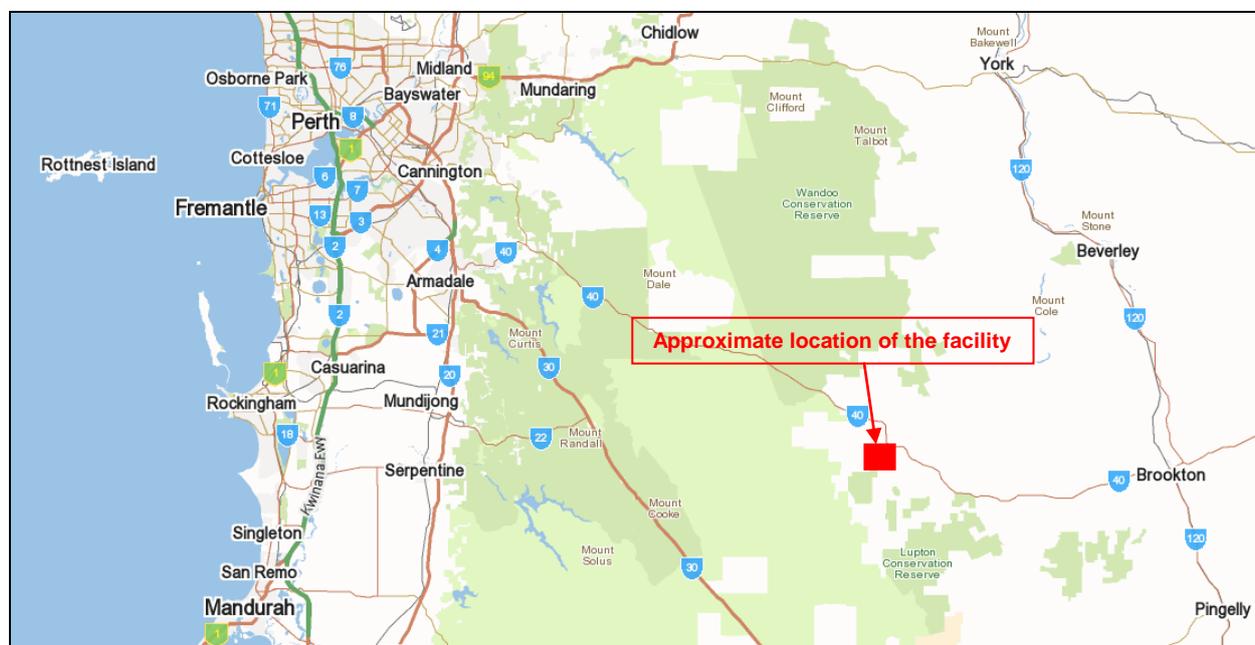
This report provides the Appeals Convenor's recommendations to the Minister for Environment in respect to the appeals and is given under section 109(3) of the *Environmental Protection Act 1986* (the EP Act).

## BACKGROUND

The licence holder operates an inert landfill at 326 Buckingham Road, Jelcobine. The facility is located approximately 85 kilometres south-east of Perth. The location of the facility is shown in Figure 1.

**Figure 1 – Location of premises**

(source: *whereis.com* 2014)



The facility is licensed under Part V of the EP Act as a Class I inert landfill site (prescribed premises Category 63 under Schedule 1 of the *Environmental Protection Regulations 1987* [EP Regulations]). Tyres (a Type 2 Inert Waste) are the only type of waste permitted to be accepted for burial at the premises.

In February 2014 the licence holder applied for a new licence. The licence was issued on 3 April 2014. As part of the renewal process, the DER re-drafted the licence in the Re-Engineering for Industry Regulation and Environment (REFIRE) format in line with the DER's reform program. It was against this decision that the appeals were received.

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from the DER on the matters raised in the appeals. The licence holder was also given the opportunity to address the matters raised in the appeals.

During the appeals investigation representatives of the Office of the Appeals Convenor discussed the appeals with the appellants and separately met with the licence holder.

The environmental appeals process is a merits based process. Appeal rights in relation to a licence are against the specifications of a licence, that is, whether the conditions of the licence are adequate or appropriate to minimise, manage or abate emissions and discharges, and to ensure that a premises is operated in an environmentally acceptable manner. Consistency with any conditions set under Part IV of the Act and previous Ministerial appeal determinations are also relevant, subject to new information or evidence being presented not previously considered.

## OUTCOME SOUGHT BY THE APPELLANTS

The appellants objected to the renewal of the licence to accept waste rubber such as tyres or conveyor belt at the landfill and sought that the approval to landfill tyres at the premises be revoked or amended to ensure that used tyres are not disposed to landfill but are made available for recycling.

The appeals were lodged under section 102(3)(a) of the EP Act, which provides that any person can lodge an appeal in respect to the conditions applied to a licence. There is no express right to appeal the decision of the DER to grant a licence. As such, the appeals were considered as being lodged in objection to the conditions applied by the DER, specifically Condition 1.3.1.

## GROUND OF APPEAL: WASTE ACCEPTANCE

Condition 1.3.1 sets out the criteria for the acceptance of waste onto the premises:

- 1.3.1 The Licensee shall only accept waste on to the Premises if:
- (a) it is of a type listed in Table 1.3.1;
  - (b) the quantity accepted is below any quantity limit listed in Table 1.3.1; and
  - (c) it meets any specification listed in Table 1.3.1.

Waste type	Quantity limit tonnes/ year	Specification <sup>1</sup>
Inert Waste Type 2	5,000	Tyres only

Note 1: Additional requirements for the acceptance of controlled waste (including asbestos and tyres) are set out in the Environmental Protection (Controlled Waste) Regulations 2004.

The appellants were of the view that waste tyres (or conveyor belt rubber) should not be allowed to be accepted at the landfill. The appellants submitted that the continued disposal of used tyres to landfill amounts to a loss of a reusable/recyclable resource and that the environmental, social and economic benefits of reusing/recycling used tyres are well documented and will not be realised in Western Australia if used tyres continue to be disposed of to landfill. The appellants also submitted that the licensing of landfill facilities to accept used tyres as waste risks the viability of newly established recycling facilities in Western Australia which depend directly on the availability of waste tyres for recycling at commercial rates.

## Consideration

In its response to the appeals, the DER advised that Condition 1.3.1 and Table 1.3.1 in the licence allow for the acceptance of tyres only at the premises and that there is no provision for the acceptance of conveyor belt rubber in the licence. The licence holder advised the premises only accepts earthmover/Off The Road (OTR) tyres, with the bulk being large

4000/57 tyres, primarily from the mining sector. The licence holder also confirmed that conveyor belt rubber is not accepted at the premises.

It is noted that a national study on the domestic and international fate of end-of-life tyres (Hyder Consulting 2012)<sup>1</sup> estimated that approximately 8.41 million equivalent passenger units, or approximately 67,270 tonnes of used tyres were generated in Western Australia in 2009–10. Of these, approximately 1.54 million equivalent passenger units (or approximately 12,330 tonnes) were OTR tyres.

The DER advised that the regulatory regime established under Part V Division 3 of the EP Act is aimed at ensuring that emissions and discharges from specific prescribed premises meet acceptable standards. Any conditions included on a licence must meet the requirements of section 62 of the EP Act; thus the conditions must be necessary or convenient for preventing, controlling, abating or mitigating pollution or environmental harm. The DER advised it considers the conditions of the licence are appropriate to prevent, control and abate potential emissions and discharges resulting from the burial of tyres in a Class I inert landfill, the most significant of which is dust.

The DER advised that previous experience with tyre recycling businesses in Western Australia has indicated that tyre recycling is financially marginal and that the failure and closure of previous tyre recycling businesses has resulted in an increase (to problem levels) of stockpiling and illegal dumping. The DER considers the availability of some alternative disposal options reduces the risk of problems occurring in the future. The DER also noted that the regulatory regime under Part V Division 3 of the EP Act is not set up to give effect to the waste hierarchy in the *Waste Avoidance and Resource Recovery Act 2007*.

It is understood the premises is the only landfill in the Tyre Landfill Exclusion Zone<sup>2</sup> (Exclusion Zone) which is licensed to bury waste tyres (up to 5,000 tonnes per annum). The facility operates as a monofill, whereby tyres are not mixed with other waste types, which means that it would be possible to recover the tyres in the future, if market demand for used tyres increases. The DER advised it considers that, in the meantime, the buried tyres are managed in an environmentally acceptable manner and do not pose a fire risk.

The licence holder advised it is not aware of any facilities in Western Australia that currently recycle earthmover/OTR tyres from mining sites or of any facilities in Australia that can recycle 4000/57 tyres. The licence holder is of the view that the storage of tyres at the premises works in tandem with any future recycling initiative as the resource is not lost as it might be if disposed of in a mixed landfill or left on disused mine sites. The licence holder advised that the tyres stored at the premises can be easily retrieved as they are only covered by clean fill and not mixed with other waste or contaminates. The licence holder also advised that in the event viable recycling becomes available at some stage, it would work with the recycling facility to ensure it was fully utilised.

During discussions with the Office of the Appeals Convenor, the appellants advised that there are now facilities in Western Australia capable of recycling OTR tyres, including 4000/57 tyres. It is understood that one of the appellants (Tyrecycle Pty Ltd) has recently expanded its operations into the OTR and mining sectors and that its Perth plant has been upgraded with a new shredding facility to improve the ability to process larger tyres.<sup>3</sup> The appellants questioned the DER's assessment that the viability of tyre recycling is financially marginal in Western Australia and were of the view that the tyre recycling industry is only marginal as a result of the regulations in place in Western Australia (compared to the other states), with the

<sup>1</sup> Hyder Consulting Pty Ltd. (2012). *Study into Domestic and International Fate of End-of-Life Tyres*. Report prepared for the Council of Australian Governments Standing Council on Environment and Water.

<sup>2</sup> The area comprising the 29 local governments in the metropolitan area and the 11 surrounding local government areas specified in Schedule 5 of the EP Regulations where disposal of tyres by burial in a landfill is only permitted with prior written approval of the CEO.

<sup>3</sup> Source: *Tyrecycle gains access to the 'big' end of town*. Full Circle (ResourceCo), Issue 5, Winter 2013.

low cost of disposal to landfill, as well as inadequate penalties for improper disposal, identified as key impediments to tyre recycling.

The appellants advised that the tyre recycling industry in Western Australia is operating below capacity and that any diversion of waste tyres to landfill presents a significant risk to the economic viability of the industry. The DER advised that a search of the Controlled Waste Tracking System<sup>4</sup> indicates that 33,400 tonnes of waste tyres were transported to waste facilities (in loads of 200 kilogrammes [kg] or more) between 1 July 2013 and 26 June 2014 (note that it is likely these figures significantly under-represent the total quantity of waste tyres transported, as loads less than 200 kg are not included). Of this total, 2,500 tonnes were transported to the licence holder's premises and 13,000 tonnes were transported to one of the appellants' (Tyrecycle Pty Ltd's) premises.

From the information presented in respect to this ground of appeal and consistent with the advice of the DER, no significant environmental risk has been raised by the disposal of up to 5,000 tonnes of tyres per annum at the site. As such, it is considered that no amendment to Condition 1.3.1 is required at this time.

Through the investigation of the appeals the Office of the Appeals Convenor noted that Condition 1.3.5 identifies Inert Waste Type 1 as one of the materials that may be used to cover waste at the premises:

1.3.5 The Licensee shall ensure that cover is applied and maintained on landfilled wastes in accordance with Table 1.3.3 and that sufficient stockpiles of cover are maintained on site at all times.

Waste Type	Material	Depth	Timescales
Inert Waste Type 2	Inert type waste 1 or soil	150mm	By the end of the working day in which the waste was deposited.

Note 1: Additional requirements for the covering of tyres are set out in Part 6 of the Environmental Protection Regulations 1987.

The licence holder advised the DER that the material used to cover the tyres originates from the premises, with no waste brought onto the premises for cover material. The DER advised that Table 1.3.3 should be amended to remove reference to Inert Waste Type 1 being used as a cover material and to refer to 'soil excavated on the premises or Clean Fill'. In discussions with the Office of the Appeals Convenor, the licence holder confirmed that waste tyres at the premises are only covered by soil or clean fill and that it would have no objection to the proposed amendment.

Consistent with the advice of the DER, it is considered that Table 1.3.3 in Condition 1.3.5 should be amended to remove Inert Waste Type 1 and to refer to 'soil excavated on the premises or Clean Fill' as the cover material.

## OTHER MATTERS

The appellants noted the new licence did not include the provision relating to the storage and disposal of used tyres which was in the Preamble to the previous licence (L7751/2001/6):

<sup>4</sup> The DER advised that the transportation of waste tyres which are produced by, or as a result of, an industrial or commercial activity on a public road is subject to the *Environmental Protection (Controlled Waste) Regulations 2004*. Waste tyres are transported as packaged controlled waste, with the result that loads less than 200 kg do not need to be tracked.

## **Storage and Disposal of Used Tyres**

In the event that a used tyre recycling facility becomes available to process and recycle used tyres which are being disposed of at this premises, approval to landfill tyres at this premises may be revoked or amended to ensure that the used tyres are made available for recycling.

The appellants submitted this provision reflected the historical understanding that sufficient tyre recycling infrastructure investment did not exist in Western Australia and contended there are now multiple tyre recycling facilities established in the state which are able to recycle all of the waste tyres (and conveyor belt rubber) generated in Western Australia, thus the landfilling of used tyres should no longer be permitted within the Exclusion Zone.

The appellants contended that the disposal of tyres to landfill is contrary to Part 6 of the EP Regulations, which includes the determination of the Exclusion Zone in and around the Perth metropolitan area, and is contrary to the Western Australian Government's waste strategy and the waste management hierarchy. The appellants also contended that the Exclusion Zone should be expanded to cover all larger regional and remote hubs, as these tyres should also be recycled, and that tyres should not be allowed to be trans-shipped to the Exclusion Zones.

### **DER advice**

With respect to the provision relating to the storage and disposal of used tyres in the Preamble to Licence L7751/2001/6, the DER advised this has never been a condition of the licence. The DER advised that the whole Preamble, including the paragraph in question, was removed previously when the licence was transferred to a new occupier in November 2011. This was in accordance with the then Department of Environment and Conservation's standard changes to licence formatting which removed preambles from licences on the basis they were not an enforceable part of the licence. The DER advised it does not consider the clause could be validly included as a licence condition. The DER also advised that section 59A of the EP Act sets out the grounds for revocation or suspension of a licence and that the availability or otherwise of recycling facilities is not a ground for suspension or revocation.

The DER advised that Part 6 of the EP Regulations was amended in 1996 to introduce penalties for damaging used tyres in a manner that would render them unsuitable for retreading (except in accordance with the Chief Executive Officer's [CEO's] written approval) and establish an Exclusion Zone. These provisions were intended to encourage reuse (retreading) of tyres and recycling of used tyres generated in and near the metropolitan area. With regard to expanding the Exclusion Zone to cover all larger regional and remote hubs, the DER advised that an amendment to the boundary of the Exclusion Zone is a matter of Government policy and would require an amendment to the EP Regulations. The DER advised it has noted the appellants' request.

The DER also advised that, based on available data on tyre recycling, there is strong competition to local recycling from export, which is not within the control of the State Government. The review of recycling activity in Western Australia in 2011–12<sup>5</sup> identified that approximately 24,000 tonnes of rubber, mainly from used tyres sourced in Western Australia was recycled, of which eight per cent (%) was recycled locally, with 23% sent to other states and 69% exported. The DER considers that further restricting landfilling of tyres (either in the Exclusion Zone or by expanding the Exclusion Zone) is not guaranteed to increase tonnages recycled locally, as tyres may flow to more distant landfills or end up being exported.

The DER advised it is reviewing existing information on used tyres in Western Australia and monitoring options for the management and recycling of used tyres across the State following the recent launch of the national voluntary Tyre Product Stewardship Scheme for used tyres and the establishment of Tyre Stewardship Australia to administer the scheme. The operation

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<sup>5</sup> Waste Authority (2013). *Recycling Activity in Western Australia 2011–12*. Report prepared for the Department of Environment and Conservation by Hyder Consulting Pty Ltd.

of the Exclusion Zone and possible regulatory and non-regulatory options for managing used tyres will be considered as the industry scheme matures.

The DER advised that any waste tyres collected in the metropolitan area which are received and buried at the premises (or any landfill) are subject to the landfill levy and noted that significant increases to the landfill levy will take effect on 1 January 2015 with further incremental increases to 1 July 2018. The DER considers these levy increases may influence the used tyre market in the metropolitan area.

### **Consideration**

The appellants' submissions with respect to a provision in a previous licence relating to the storage and disposal of used tyres and the Exclusion Zone are noted. As these issues do not relate to the conditions of the licence, they are considered to be outside the scope of the appeal investigation and are not considered in the context of the recommendations to the Minister.

### **CONCLUSION AND RECOMMENDATIONS**

For the reasons stated in this report and consistent with the advice of the DER, no amendments to the waste acceptance criteria in the licence are considered necessary at this time.

Consistent with the advice of the DER, it is recommended that Table 1.3.3 in Condition 1.3.5 is amended to remove reference to Inert Waste Type 1 being used as a cover material and to refer to 'soil excavated on the premises or Clean Fill' as the cover material. The final wording should be determined by the DER in giving effect to the Minister's decision under section 110 of the EP Act.

Jean-Pierre Clement  
A/APPEALS CONVENOR

**Investigating Officer:**  
Stephanie Turner, Senior Environmental Officer