



Waste Industry Circular for WCRA Members November 2018

Temporary Storage of Skip Bins

Prepared for the Members of the Waste Contractors & Recyclers Association of NSW

Issue

In practice Members may need to temporarily store skip bins that are in transit at a depot overnight or over a weekend. This may occur for a variety of reasons including:

- Being unable to deliver to a facility within opening hours (typical examples include truck breakdown, heavy traffic, excess volumes of waste on a given day, etc.); or
- Not having sufficient vehicles available to transport bins to their destination; or
- Heavy Vehicle Drivers have exceeded their lawful work hours.

However, depending on the circumstances, such actions may be in breach of the *Protection of the Environment Operations Act 1997 (POEO Act)*, the *Protection of the Environment Operations (Waste) Regulation 2005* and planning laws.

At this point, the EPA is yet to provide guidance on when it will take enforcement action in response to this type of temporary storage. Accordingly, we have set out some general guidance below.

What are the key potential offences?

Under section 143 of the POEO Act it is an offence to transport waste to a place that cannot lawfully be used as a Waste Facility for that waste. Section 144 of the POEO Act also makes it an offence to use a place, or cause or permit a place to be used as a Waste Facility. 'Waste Facility' is defined in the POEO Act as any premises used for the storage, treatment, processing, sorting or disposal of waste.

When can you temporarily store skip bins overnight?

Generally, a skip bin may be stored overnight:

- 1) if it is permitted under planning law, for example by a development consent; and
- 2) no licence is required from the EPA, for example where the waste is in transit and does not trigger the requirement to hold an EPA licence for 'waste storage'; and
- 3) no environmental harm occurs or is likely to occur.

What factors can assist you?

We recommend that you:

- 1) Review your consent to identify whether overnight storage is specifically permitted and if not, whether it is 'ancillary' to the use of the land under the consent.
- 2) Consider the volume of material, as no EPA licence is required if less than 1,000 cubic metres or 1,000 tonnes are stored on the premises at any one time *and* the premises is not otherwise a licensed waste facility, (the requirement for a licence is additional to that of the development consent).
- 3) Consider the circumstances of the storage in transit to determine whether it is 'temporary' while in transit or more permanent storage (why is it being temporarily stored? For how long? What are the alternatives?). In *EPA v Grafil Pty Ltd* [2018] NSWLEC 99 it was found that no EPA licence was required for 'waste storage' in respect of material that was temporarily stockpiled for use. It is likely that similar considerations would apply in respect of material in transit.
- 4) Review and identify the material in the bin and the potential environmental impacts.

What should you do?

As there is no specific guidance in the legislation or from the EPA, each situation must be considered on a case-by-case basis. As always, the temporary storage must not cause, or be likely to cause, any environmental impacts.

As an alternative it may be possible to apply for a development consent to expressly permit overnight storage of skip bins.



Please note that this is general advice only. We recommend that Members seek specific legal advice in relation to their particular situation. If you require further information or advice, please contact:

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