

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

## **The AGL Macquarie Bayswater Power Station Ash Dam ('AGL Macquarie BPSAD') coal ash exemption 2023**

### **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 AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash from certain requirements under the *Protection of the Environment Operations Act 1997* ('POEO Act') and 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 AGL Macquarie Bayswater Power Station Ash Dam ('AGL Macquarie BPSAD') coal ash order 2023'.

### **1. Waste to which this exemption applies**

- 1.1. This exemption applies to AGL Macquarie BPSAD coal ash and AGL Macquarie BPSAD coal ash blended with other materials ('blended AGL Macquarie BPSAD coal ash') that is, or is intended to be, applied to land as an engineering material.
- 1.2. In this exemption, AGL Macquarie BPSAD coal ash means coal combustion products (CCPs), fly ash or furnace bottom ash from burning Australian black coal at Bayswater Power Station located on New England Highway, Muswellbrook NSW 2333 which are extracted from the Bayswater Power Station Ash Dam owned and operated by AGL Macquarie Pty Limited (ACN: 167 859 494) under Environment Protection Licence (EPL) 779.

### **2. Persons to whom this exemption applies**

- 2.1. This exemption applies to any person who applies, or intends to apply, AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash to land as set out in 1.1.

### **3. Duration**

- 3.1. This exemption commences on 11 November 2023 and is valid until 11 November 2025, unless revoked in writing by the EPA.

## **4. Premises to which this exemption applies**

- 4.1 This exemption applies to the premises at which the consumer's actual or intended application of AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash is carried out.

## **5. Exemption**

- 5.1. 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 AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash to land as an engineering material at the premises:
- 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, 110 and 114 of the Waste Regulation
- 5.2. The exemption does not apply in circumstances where AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash 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.

## **6. Conditions of exemption**

The exemption is subject to the following conditions:

- 6.1. At the time the AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash is received at the premises, the material must meet all chemical and other material requirements for AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash which are required on or before the supply of AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash under 'the AGL Macquarie Bayswater Power Station Ash Dam ('AGL Macquarie BPSAD') coal ash order 2023'.
- 6.2. AGL Macquarie BPSAD coal ash and blended AGL Macquarie BPSAD coal ash can only be applied to land:
- 6.2.1. in cementitious mixes such as concrete, and
  - 6.2.2. in non-cementitious mixes such as an engineered fill, stabiliser, filter or drainage material or as a sand substitute as follows:
    - (a) pipe bedding material,
    - (b) selected backfill adjacent to structures,
    - (c) road pavement, base and sub-base structures,
    - (d) composite filler in asphalt pavements,
    - (e) rigid and composite pavement structures,
    - (f) select layers which act as working platforms at the top of earthworks,
    - (g) fill for reinforced soil structures (including geo-grid applications).
- 6.3. In cementitious mixes, the consumer can only apply the AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash to land where it complies with a relevant specification or Australian Standard or supply agreement.

- 6.4. In non-cementitious mixes the consumer can only apply AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash to land where it:
- 6.4.1. complies with the relevant specification or Australian Standard or complies with supply agreement/s, or
  - 6.4.2. complies with a development consent that specifically considers the use of AGL Macquarie BPSAD coal ash, and
  - 6.4.3. is not applied in or beneath water including groundwater.
- 6.5. The consumer must keep a written record of the following for a period of six years:
- the quantity of any AGL Macquarie BPSAD coal ash and blended AGL Macquarie BPSAD coal ash received; and
  - the name and address of the supplier of the AGL Macquarie BPSAD coal ash and blended AGL Macquarie BPSAD coal ash received.
- 6.6. The consumer must make any records required to be kept under this exemption available to authorised officers of the EPA on request.
- 6.7. The consumer must apply AGL Macquarie BPSAD coal ash to land within a reasonable period of time after its receipt.

## 7. Definitions

In this exemption:

**application to land** means applying to land by:

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

**cementitious mixes** means either AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash which has been mixed with general purpose cement, lime and other activators for use in bound applications, where the materials must be chemically bound together.

**consumer** means a person who applies, or intends to apply, AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash to land.

**non-cementitious mixes** means either blended AGL Macquarie BPSAD coal ash or AGL Macquarie BPSAD coal ash that is not blended with general purpose cement, lime and other activators or used in bound applications.

**non-cementitious mixes** means either AGL Macquarie BPSAD coal ash or blended AGL Macquarie BPSAD coal ash that is not mixed with general purpose cement, lime and other activators or used in bound applications.



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## 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](http://www.epa.nsw.gov.au)

In gazetting 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 the AGL Macquarie BPSAD coal ash 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.

The receipt of AGL Macquarie BPSAD coal ash remains subject to other relevant environmental regulations in the POEO Act and 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.