

Illegally Dumped Asbestos Clean Up Program Guidelines

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Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au

See also: www.environment.nsw.gov.au

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Introduction

About the Environmental Trust

The Environmental Trust (the Trust) is an independent statutory body established by the NSW Government to fund a broad range of organisations to undertake projects that enhance the environment of NSW. The Trust is empowered under the *Environmental Trust Act 1998* and its main responsibility is to make and supervise the expenditure of grants. The Trust is administered by the Office of Environment and Heritage, Department of Premier and Cabinet (OEH).

The Illegally Dumped Asbestos Clean Up program is funded by the Trust in cooperation with the Environment Protection Authority (EPA).

(See Glossary on page 10 of this document for definitions of all words in italics)

About the Illegally Dumped Asbestos Clean up Program

The program is there to help avoid significant risk to the *environment* or *public health* in NSW by contributing funds towards the removal and management of illegally dumped asbestos and other hazardous orphan waste that has been placed or disposed of on *premises* unlawfully, when measures need to be taken immediately.

How it works

State agencies including the EPA, emergency service organisations and local councils, may become involved in *clean up* activities of illegally dumped asbestos and other hazardous orphan waste. In many cases a *responsible party* is identified and will be in a position to fund *clean up*. However, sometimes the responsible party is unknown, unavailable, unwilling (despite a legal obligation to do so) or unable to pay for *clean up* within the timeframe required to avoid or at least minimise harm to the environment or public health. Under these circumstances the organisation responsible for coordinating the *clean up* in the absence of the *responsible party* may apply for funding under the program.

Where/when it is an organisation's obligation to *clean up* illegally dumped asbestos and other hazardous orphan waste, the organisation should do so, irrespective of whether their application seeking funding is approved or not. The program is not to be used to fund operations that are normally carried out by the applicant that have subsequently been contracted out to minimise the applicant's internal operational costs. That is, organisations should not be reliant upon this program to meet their duty of care obligations.

The Trust has delegated to nominated officers of the EPA the power to authorise the spending of Trust funds under this program. While the EPA is an independent statutory authority, delegated officers will work closely with Trust staff to ensure that the program is delivered effectively.

Note: For incidents related to emergency pollution please refer to the Trust's [Emergency Pollution Clean Up Program Guidelines](#).

Funding

The budget for this program is \$0.5 million annually. Only those instances that meet the program eligibility criteria can be funded. There is also a minimum amount per claim (see page 4 for further details).

How to use these Guidelines

The Guidelines are intended for use by applicants for funds for *clean up* of illegally dumped asbestos and other hazardous orphan waste, where applicable.

The Guidelines explain the type of situations that are eligible for funding. It is not possible to identify every scenario that can be funded; therefore an eligibility test (see Assessment criteria below) has been developed against which individual situations can be assessed.

Pages 5 and 6 the Guidelines outline the application process.

In certain circumstances there may be inadequate information or a limited timeframe available to respond to illegally dumped asbestos and other hazardous orphan waste situations. In such situations following the Guidelines as closely as possible should be balanced with the need to make quick decisions.

It is recommended that applicants who often deal with illegally dumped asbestos and other hazardous orphan waste spend the time to read the Guidelines in full and contact their EPA regional office with any questions. Following the Guidelines will enable applicants to apply for funding quickly and efficiently when the need arises.

Assessment criteria

The following considerations must be addressed before funding will be recommended by the EPA.

1. The proposed *clean up* measures are safe, environmentally sound and cost effective. Cost effectiveness should be assessed within the context of the necessity to respond within a limited timeframe (see *Conditions of eligibility* on page 4).
2. There is, or is likely to be, undue delay in starting the *clean up* because:
 - There are substantial difficulties in establishing who is the *responsible party* for the *clean up* costs, OR
 - There is major uncertainty about the likely payment of *clean up* costs by the *responsible party*.
3. The circumstances of the dumping will pose a significant risk to the *environment* or *public health*.
4. The asbestos and other hazardous orphan waste has been placed or disposed of on the *premises* unlawfully and the owner/*occupier* of the *premises* has no association with the *waste*.

Eligibility

Who can apply?

Any organisation can apply for Trust funds for *clean up* of illegally dumped asbestos or other hazardous orphan waste in NSW, **except those listed below**:

- the person who dumped or caused the waste to be dumped;
- the person responsible for the waste (e.g. the transporter of the material) or the owner of the waste;
- the owner or *occupier* of the *premises*, if directly involved in the dumping; or
- the *clean up* contractor.

Note: Generally, an individual would not apply directly for funds for *clean up* of illegally dumped asbestos or other hazardous orphan waste. However, an example of where this may occur would be if an individual had asbestos or other hazardous orphan waste dumped on their property. In this case the landowner, after contacting the Environment Line (Telephone 131 555, available 24 hours), may be directed to the appropriate regulatory authority. Where this authority is the local council, and council intervention and response is provided, council could then become the claimant and deal with the incident. In such a circumstance council and the EPA would have to be satisfied that the owner/*occupier* of the land is not the responsible party or associated in any way with the waste. (See also *ineligible activities* on pages 3 and 4 of these guidelines)

Eligible Activities

Funds can be considered for, but not limited to, the following *clean up* actions (provided the situation satisfies the assessment criteria on page 2):

- Sampling, analysis and identification of the waste.
- Assessments of risk to human health or the environment from the waste in the event the waste is not cleaned up.
- Removal, storage and disposal of the waste including the cost of collection, transport to, and disposal of the waste at an *appropriate waste facility*.
- Temporary storage of waste, but only when:
 - the authorising EPA officer is of the opinion that it is not practical or lawful to store the materials in existing storage facilities provided by public authorities (including council) or emergency service organisations; or
 - NSW Fire and Rescue deems the materials to be unsafe to store at storage facilities provided by public authorities (including council) or emergency service organisations

Ineligible activities

Trust funds **cannot** be used for the following:

- Salaries, capital equipment or infrastructure of public authorities (including councils) or emergency response organisations.
- *Clean up* actions that are used to assist an organisation or individual in fulfilling their general, day-to-day legal responsibilities in the management of *waste*.
- *Clean up* of illegally dumped asbestos or other hazardous orphan waste that is found on lands that were on those lands prior to the owner purchasing the lands. For example, a new land owner may find, in due course, illegally dumped asbestos waste. In such a situation, the new owner of the land becomes the owner of the waste and must bear any disposal costs.
- Clearance Certificates (required for all licensed asbestos removal work from 1 July 2012).

Note: Funds can only be used for additional costs incurred (outside ordinary business) by council for engaging a contractor to do clean up work. Please contact the EPA if you are uncertain.

Conditions of eligibility

In order to ensure equity and fair use of funding available through this program, organisations should adhere to the conditions outlined below.

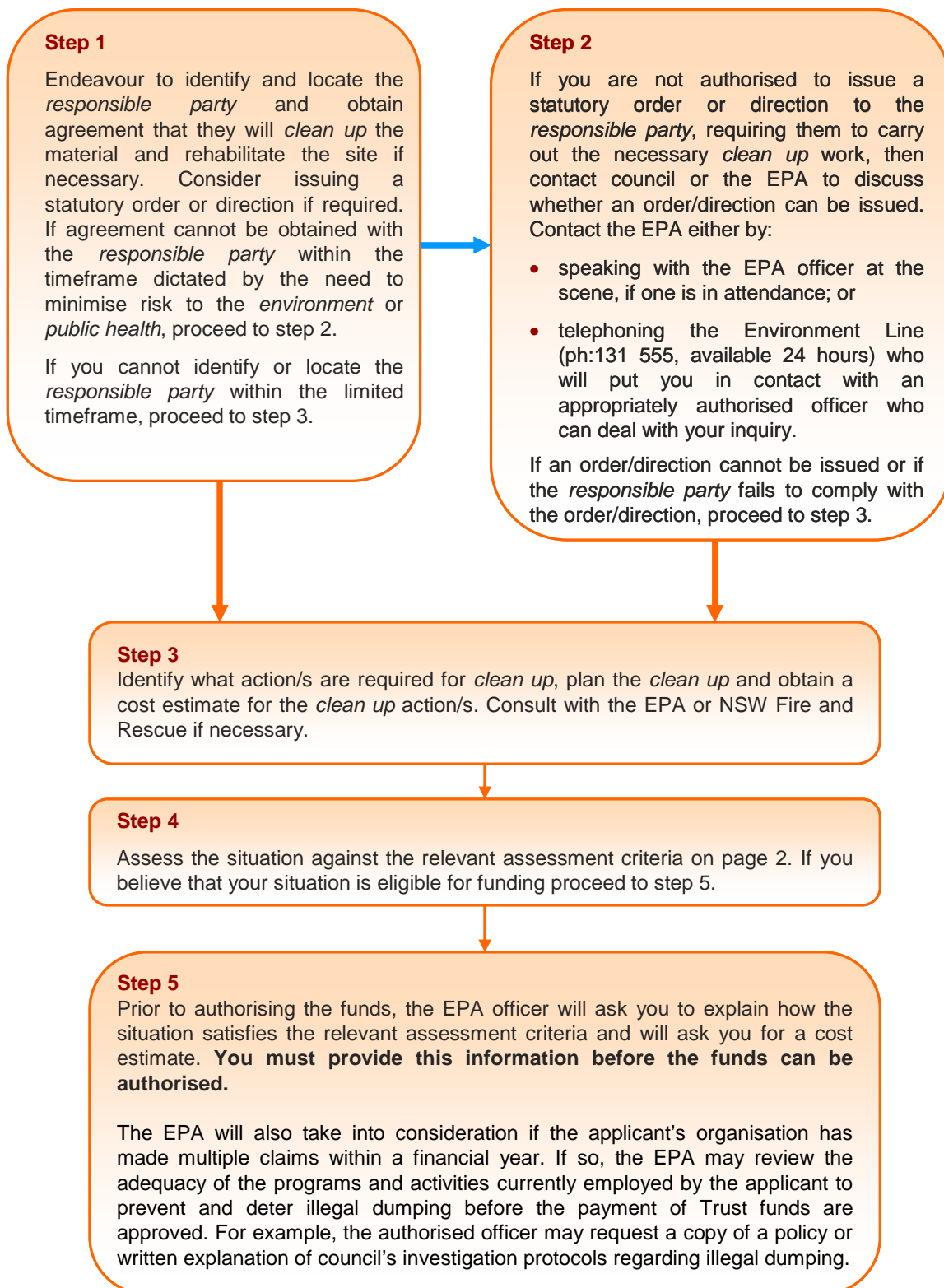
- For organisations who **have obligations** to participate in the management of *orphan waste* situations, the **minimum claim for incidents is \$2,000 (ex GST)**. The exception to this is when an organisation is claiming on behalf of individuals/organisations that **do not have obligations** to participate in the management of *hazardous orphan waste* situations.
- Organisations should follow their relevant procurement guidelines including ensuring value for money. It is an organisation's responsibility to rigorously check quotes as the EPA will not authorise excessive claims.
- Applicants must notify the EPA **within three weeks** of being made aware of an illegally dumped asbestos waste incident to be eligible for funding. Funding will not be provided for waste for which the location has been known for a long period of time.
- Applicants must ensure that they provide the EPA and the Trust with all relevant paperwork required to process a claim. Failure to provide the required documents **within three months** of an authorising officer issuing an approval number will result in the claim being void and cancelled.

Application process

How to apply

Follow these steps when applying for *clean up* funds:

Authorisation



Step 6

If the EPA officer assesses that the funding request is eligible they will issue you with an authorisation number which applies to an upper limit of agreed funding. This upper limit may be varied later in consultation with the EPA officer. There is one authorisation number per site/incident. Once you have this authorisation number, the Trust is obliged to pay for the agreed *clean up* provided the applicant abides by the *Conditions of eligibility* which are outlined on page 3. If these Conditions are breached, the Trust may withhold payment.

Note: there are two types of authorisation:

- **Immediate authorisation**, which will mean that the claim is processed as outlined in this section and payment is made within the 3 month limit; **or**
- **Pending authorisation conditional to available funds.** Funding for this Program is limited to \$0.5 million in any one financial year. The Trust is required to have an allocation of funds available at all times in the event of a large environmental pollution incident. Should the expenditure in any one financial year approach this limit, any new authorisations will be subject to funds being available at the end of the financial year. In this situation, an authorisation number will be issued, however funds may not be paid until June. Should funding become available the Trust will advise organisations that have pending authorisations to submit all documentation and issue an invoice. Pending authorisations will be paid in order of receipt until the \$0.5 million limit is reached.

Organisations should note that in most circumstances it is likely that an immediate authorisation will be given if the incident/organisation is eligible for funding.

Clean up**Step 7**

Proceed with and complete *clean up* as agreed with the authorising EPA officer. The applicant must pay for the *clean up* at this stage. You will be reimbursed after steps 8 – 11 are complete.

Payment**Step 8**

If the limited timeframe did not allow for investigation at step 1, endeavour to identify and locate the *responsible party* and seek reimbursement of *clean up* costs from the *responsible party*. If the *responsible party* cannot be identified or payment is not received proceed to step 10. Generally it is expected that additional investigation would be undertaken after the situation has been cleaned-up and the EPA officer should be advised of the outcome. That is, additional investigation should have occurred since step 1 and you will be required to demonstrate this. Failure to adequately investigate may affect future approvals under the program.

Step 9

Complete the *Form for Seeking Payment of Trust Funds*.

Forms are available to download from the website along with these Program Guidelines at environment.nsw.gov.au/grants/cleanup.htm.

You must attach all supporting documentation, such as invoices evidencing your payment of clean up costs, laboratory results and other requested information. Any invoices you raise seeking reimbursement must be billed to the **Environmental Trust**, PO Box 644, PARRAMATTA 2124 (not OEH or EPA). The funds will be paid to the applicant directly. Funds will not be paid to individual sub-contractors.

The completed form and supporting documents should be submitted to the Environmental Trust by post to the address above, or email to info@environmentaltrust.nsw.gov.au who will forward all paperwork to the EPA authorising officer. The EPA officer will provide final approval to the Trust for processing and payment. Trust staff will follow any missing documentation up with the applicant.

Step 10

After the EPA authorising officer and the Trust have verified the information provided in the form, and are satisfied that the application meets all the funding requirements, payment will be made to the applicant. This should occur within 15 working days of the Trust receiving the correct documentation.

Step 11

If the *responsible party* is subsequently identified and measures to seek reimbursement from that party have been successful, the applicant must in turn reimburse the Environmental Trust.

Failure to submit all required documentation

Environmental Trust staff will follow up with applicants at one, two and three month intervals of the date of the claim being authorised if they have not received all of the paperwork as outlined above.

If the paperwork has still not been submitted at three months, Environmental Trust staff will advise the relevant EPA authorising officer that the claim is being cancelled and the EPA authorising officer may contact the applicant to confirm that clean up actions were undertaken. The Environmental Trust will send the applicant a formal letter notifying them that the claim is cancelled.

Disputing a funding decision

If you would like to dispute a decision regarding payment of Trust funds for this program please contact the authorising officer's manager, in the first instance. If you would like to take the matter further you can write to the Environmental Trust (details below).

Further information

To organise authorisation of Trust funds speak with the EPA officer at the scene or contact the Environment Line on 131 555 (available 24 hours).

For further information about the Illegally Dumped Asbestos Clean Up Program please contact the Environmental Trust.

Environmental Trust PO Box 644 PARRAMATTA NSW 2124; Level 6 10 Valentine Avenue, Parramatta NSW 2124 Phone: (02) 8837 6093 Fax: (02) 9585 6548	Email: info@environmentaltrust.nsw.gov.au Web: www.environmentaltrust.nsw.gov.au
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Further copies of these [Guidelines](#) are available on the Trust's website.

Conditions of funding

- The following conditions apply for expenditure of funds. If these conditions are breached the EPA may recommend that the Trust withhold payment:
- The funds can only be used for services/activities that protect the *environment* or *public health*.
- The funds will be paid to the applicant directly. Funds will not be paid to individual sub-contractors.
- The applicant must make all fair and reasonable efforts to identify, locate and seek payment from the *responsible party* before funds will be paid.
- All services/activities being funded must be undertaken by appropriately qualified and experienced people and be carried out in a competent manner.
- All illegally dumped asbestos or other hazardous orphan waste must be transported by appropriate *waste transporters* and disposed of at *appropriate waste facilities*.
- Funds will only be paid on receipt of a correctly completed *Form for Seeking Payment of Trust Funds* (with relevant supporting information that includes a Tax invoice made out to the Environmental Trust).
- The Trust reserves the right to withhold payment until a site inspection is undertaken by an EPA officer and the officer is satisfied that the authorised works were appropriately undertaken and have been adequately completed. The decision to undertake a site inspection is for the Trust or the EPA to make. EPA will undertake the site inspection within three months if deemed necessary.
- Claims will only be considered if received within three weeks of the applicant becoming aware of the illegally dumped asbestos waste.
- Claims will be finalised within three months of the date of authorisation by the EPA. If they are not finalised within this period they will be cancelled, except in exceptional circumstances.
- The authorisation of funds is based on the information available at the time. A refusal is not intended to provide a guarantee that the material is safe.
- The *NSW Crimes Act 1900* contains a number of provisions which make it a criminal offence to dishonestly obtain money.

Glossary of definitions

Appropriate waste facility	Premises lawfully authorised to accept, store, treat, reprocess, sort and/or dispose of waste.
Asbestos waste	As defined in the <i>Protection of the Environment Operations Act 1997</i>
Clean up	<p>In relation to a pollution incident, includes:</p> <ul style="list-style-type: none"> • action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident, and • ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and • preparing and carrying out a remedial plan of action <p>It also includes (without limitation) action to remove or store illegally dumped asbestos waste that has been disposed of unlawfully.</p>
Environment	As defined in the <i>Protection of the Environment Operations Act 1997</i> .
Occupational health	<p>Includes:</p> <ul style="list-style-type: none"> • the health of people working with the material involved • the health of people employed by the company responsible for the situation, and • the agencies responding to the situation
Occupier	Of premises means the person who has the management or control of the premises.
Orphan waste	Waste, as defined in the <i>Protection of the Environment Operations Act 1997</i> , which has been dumped and the person who dumped the waste (<i>responsible party</i>) cannot be identified.
Premises	<p>Includes:</p> <ul style="list-style-type: none"> • a building or structure, or • land or a place (whether enclosed or built on or not), or • a mobile plant, vehicle, vessel or aircraft
Public health	Non-occupational health.
Responsible party	<p>Can be any of the following:</p> <ul style="list-style-type: none"> • the person who dumped the waste, caused the waste to be dumped • the person responsible for the waste or the owner of the waste; or • the owner or occupier of the site or premises, whether directly involved in the dumping or not
Waste	As defined in the <i>Protection of the Environment Operations Act 1997</i> .