



WASTE CONTRACTORS &
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Ms Jacqueline Moore
Acting CEO
NSW EPA
Locked Bag 5022
PARRAMATTA NSW 2124

By e mail as a PDF file to waste.updates@epa.nsw.gov.au

Dear Ms Moore

Re: Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021

The Waste Contractors & Recyclers Association of NSW (WCRA) welcomes the opportunity to provide feedback on the draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021.

WCRA has 212 Members across NSW and the ACT representing a broad range of business organisations across all parts of the waste and recycling industry. Our members are involved in the breadth and depth of the sector including community engagement and education, infrastructure investment and operations, collection, transfer, processing, resource recovery, recycling, energy recovery, specialised waste types, and the responsible disposal of residual waste products.

In NSW, the sector remains a key contributor to the state's economy and environment. The value of NSW's waste management sector is estimated to be about \$5.3 billion in 2017-18 across the collection, transport, processing, disposal and recovery (including energy) of MSW (\$1.65 billion), C&I (\$1.54 billion), and C&D (\$1.1 billion); the approximate value of recovered materials for that period was \$1 billion¹.

WCRA strongly advocates for a systems-based approach to managing waste materials in NSW, which must be underpinned by the adopted waste management hierarchy, as we move Australia towards a genuine circular economy that emphasises design, extended producer responsibility and sustainable natural material management, as well as having clear pathways for the use of secondary raw material in order that we can keep circulating it!

A true systems-based approach recognises that a variety of treatment options are required as part of resolving the challenges posed by materials discarded, once generated by the community. Energy from waste (EfW) can form a vital part of a sustainable waste management chain, where there are in place complementary policies and initiatives that first and foremost focus on avoidance and waste reduction, reuse, and recycling. These are the leading priorities of the hierarchy where energy recovery is in fact preferable to landfill disposal.

¹ Inside Waste Industry Report 2017-18: Volumes and Values

WCRA advocates, that as per the waste management hierarchy, EfW can and must co-exist and play a complementary and fundamental role in an integrated waste management and resource recovery model in NSW, as it does in jurisdictions both in Australia and globally; however, we also recognise that this window of opportunity is under pressure from NSW, given the state's adopted EfW policy and infrastructure plan.

WCRA hereby formally seeks clarification on the potential application of the waste levy to the inputs at EfW facilities. WCRA's position is as follows:-

- Best practice, controlled EfW is an environmentally sound method, diverting non-recyclable residues from landfill
- EPA's current position is that there's no plan to impose the waste levy on inputs (e mail to WCRA 10/9/2021)
- This position might change if there's a waste levy review (a waste levy review is scheduled to occur in 2026)
- WCRA's position is that any application of the waste levy on EfW inputs will make it very difficult for EfW to compete with landfill
- A key objective of the waste levy is to divert materials away from landfill
- Investors who are planning EfW facilities need certainty on this issue, as any future law changes that result in the application of the waste levy on EfW inputs will be a major commercial issue.

While WCRA's comments on the draft regulation can be found below, our overarching constructive feedback is that with the most stringent and restrictive EfW policy already in place in NSW, the government now should ensure that it provides investment certainty to the few project proponents who are eligible for any exemptions to the prohibition by determining through gazette as soon as possible the nominated precincts or sites. WCRA would encourage the government to expand the range of potentially permissible types of locations to include: (i) Clean Manufacturing Precincts; Renewable Energy Zones; and land zoned IN 1 General Industrial with State Significant Precincts under the State Environmental Planning Policy (SEPP) (State Significant Precincts) (2005), for reasons detailed below. Further, we note that due to the current drafting within the policy there are potentially downstream restrictions on the use of materials, in particular fuel utilised for pyrolysis. WCRA would encourage government to ensure this policy is limited to simply EfW and not move into downstream matters, whether intentionally or otherwise.

The unprecedented recent rain events and the limited disposal options for Sydney's waste have been significantly highlighted in recent weeks. It is very clear to all across the market (including government and regulators) that Sydney has a major lack of infrastructure to safely address our essential waste management disposal needs. To this extent, it is critical that EPA and the NSW Government supports the EfW sector and ensures that the regulatory framework does not hinder well-considered, best-practise EfW solutions and proposals.

Please do not hesitate to contact the undersigned if you would like to further discuss WCRA's submission.

Yours faithfully

Tony Khoury
Executive Director

Attached

SUBMISSION

Section	WCRA's feedback
<p>128A Definitions Energy recovery means the recovery of energy, either as heat or fuel.</p>	<p>WCRA is seeking clarity over why there is a reference to fuel in the definition of energy recovery. Facilities that make fuel without thermal treatment, e.g., RDF and PEF, would not be prohibited, but facilities that make fuel using thermal treatment (eg pyrolysis) will be prohibited.</p> <p>As fuel combustion is captured within the definition of thermal treatment, it is recommended that the EPA clarifies this definition so that it reads: "energy recovery means the recovery of energy, either as heat or through the combustion of fuel".</p> <p>We note that there is no reference to 'fuel' in the scheduled activity of 'energy recovery' in the POEO Act.</p>
<p>128A Definitions Former mine site means a mine site other than a derelict mine site.</p>	<p>We would like to understand the policy position for limiting this to "former" mine sites. If there are operating mine sites that can pursue an additional or transitional opportunity with an EfW facility, should that be precluded?</p> <p>In any case, please clarify whether this includes an operating mine site that is scheduled for closure, where the EfW facility is intended to commence operations after the cessation of mining operations.</p>
<p>128A Definitions Former thermal electricity generation site</p>	<p>Not defined. Please insert a definition for former thermal electricity generation site.</p> <p>As per mine sites, we recommend that the definition cover thermal electricity generation sites, whether operating or otherwise. In the case of "former" sites, the definition should include those that have either already closed, have been announced as being scheduled for closure or that will otherwise cease operating as thermal electricity generation sites at or around the time of the</p>

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	commencement of operations of the intended EfW facility.
128A Definitions Regional Jobs Precinct	Not defined. Please insert a definition for Regional Jobs Precinct.
<p>128A Definitions Thermal treatment means the processing of waste by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal treatment process but does not include the following:</p> <p>(d) the incineration of waste for destruction or disposal.</p> <p>(i) the thermal treatment of plastic waste to produce plastic products, or inputs for plastic products, where at least 75% of the weight of the waste plastic thermally treated in a 12-month period is converted into plastic products or inputs for plastic products.</p>	<p>(d) The regulation implements the EfW infrastructure plan, which states that the NSW government “supports thermal energy recovery as a residual waste management option where it can deliver positive outcomes for the community while protecting human health and the environment...” and “not as an alternative to waste reduction or recycling.”</p> <p>While WCRA acknowledges the intent of the NSW government, the distinction between energy recovery through thermal treatment (prohibited) and incineration of waste for destruction or disposal (exempted) needs to be better defined and clarified, as both undergo combustion of waste that is destined for final disposal.</p> <p>(i) This definition requires further clarification to ensure that plastic waste processing and reforming are not inadvertently captured by the regulation.</p> <p>Please also refer to our comments and significant concerns in the covering letter concerning the potential application of the waste levy to EfW inputs.</p>
<p>128C Exceptions to prohibition on energy recovery from thermal treatment of waste</p> <p>(1) A person is not guilty of an offence under clause 128B if the activity or work prohibited by the clause is carried out at –</p> <p>(b) 1 of the following nominated precincts, identified on a map published in the Gazette by the EPA –</p> <p>(i) the Richmond Valley Regional Jobs Precinct</p> <p>(ii) the Southern Goulburn Mulwaree Precinct</p> <p>(iii) the West Lithgow Precinct</p>	<p>(1)(b) and (2) To provide project proponents with investment certainty and to allow for the planning and development process to occur, WCRA is seeking:</p> <ul style="list-style-type: none"> • The gazettal of the nominated precincts under 128(C)(1)(b) and (c) before or on the commencement of the Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021. • An inclusion stipulating that once those precincts [(1)(b) and (c)] are gazetted,

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<p>(c) 1 of the following nominated precincts or sites, identified on a map or specified in a notice published in the Gazette by the EPA –</p> <ul style="list-style-type: none"> (i) an Activation Precinct (ii) a Regional Jobs Precinct (iii) a former mine site (iv) a former thermal electricity generation site <p>(2) The EPA may, by notice published in the Gazette, vary or revoke a nomination referred to in subclause (1)(b) or (c).</p>	<p>revocation by the NSW government will not be possible.</p> <p>(1)(c) WCRA believes that it would be prudent of the NSW government to allow itself a wider range of potentially permissible locations, in alignment with national trends such as greater focus on a federal level (and internationally) in areas such as renewable energy and sustainable manufacturing/production, as well as to allow for the development of localised solutions in regional locations that support the NSW government's broader objectives, driving circular economy outcomes as part of these major industrial and manufacturing initiatives.</p> <p>WCRA proposes expanding the scope of 1(c) to also include:</p> <ul style="list-style-type: none"> (v) Clean Manufacturing Precincts (vi) Renewable Energy Zones (vii) State Significant Precincts under the State Environmental Planning Policy (SEPP) (State Significant Precincts) (2005) and zoned IN1 General Industrial, where the energy generated is intended to be mostly used to power industrial or manufacturing processes within that site or within the closest SAP, CMP, REZ or SSP. <p>WCRA is also seeking clarity on the following wording: "1 of the following nominated sites, identified on a map or specified in a notice published in the Gazette by the EPA" – would this publication in the Gazette be made by the EPA or by the nominated site?</p>
<p>128C(3)(a)(ii) "the energy generated from thermally treating the less environmentally sound fuel, <i>including any energy generated from the energy...</i>" [italics added]</p>	<p>We expect this is a typo and that the language in italics should be amended to read, "<i>including any energy generated from that fuel...</i>"</p>
<p>128C (4) Exceptions to prohibition on energy recovery from thermal treatment of waste In this clause – Mostly used, in relation to powering industrial or manufacturing processes on site, means at least 90% of the</p>	<p>A definition is sought on what will be the base energy on which the 90% requirement will be applied. While it may be workable in normal operating conditions to require that the EfW facility delivers energy to industrial or manufacturing off-takers, this mechanism needs to retain some</p>

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<p>energy generated on site in a 12-month period is used on site.</p>	<p>flexibility to allow for maintenance and operational shutdowns of the off-taker during which time the EfW will still be producing energy and should be permitted to export that energy to the grid.</p> <p>In addition, from a bankability perspective for the EfW facility, the EfW facility will need to retain the ability to export energy to the grid in the event of insolvency or breach of contract by the industrial or manufacturing off-taker.</p> <p>In terms of the use of the energy “on site”, we recommend that the EPA consider a broader approach to the utilisation of the energy generated by an EfW such that the EfW would be able to provide the energy to other users within the same precinct, whether within a Special Activation Precinct, Regional Jobs Precinct, Renewable Energy Zone, Clean Manufacturing Precinct or otherwise. To the extent that the EfW facility enters into an energy supply agreement with one or more offtakers within the same designated precinct, we submit that the policy objectives for the recovery and use of the energy for closely located industrial or manufacturing processes would be achieved.</p>
<p>128D Effect of prohibition on environment protection license The EPA must refute an application for the issue, transfer, or variation of a license if granting the application would purport to authorise an activity or work prohibited by this part.</p>	<p>Clarity is sought on whether this will apply to intensifying and/or changing uses if an applicant has existing use rights in the planning context.</p>