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21 November 2016

WCRA submission to the NSW EPA's consultation paper – "New minimum standards for managing construction and demolition waste in NSW, and other reforms for managing waste"

The Members of the Waste Contractors & Recyclers Association of NSW ("WCRA") welcome the opportunity to provide a submission to the NSW EPA in relation to the proposed new minimum standards for managing Construction & Demolition (C&D) waste in NSW, along with other proposed waste management reforms referred to in this same document. And thank you for granting us the extra few days required to better canvass the views of our 193 Members who own, operate or control an estimated 95% of the vehicles used in NSW waste management collection activities.

Our Members have requested that WCRA highlights to the EPA and the NSW Government the fact that overall the waste management sector is performing to a high standard. Whilst there are a few rogue operators, the vast majority of operators in the waste management sector operate in a lawful manner, with good procedures and practices.

Our feedback follows the same heading structure as used in the consultation document.

1 Introduction

- Laws & regulations that cannot be enforced are bad for business. They are also frustrating & discouraging to regulators and operators alike. In the case of the NSW waste management sector, poor laws and regulations will undermine the investment we and the Government have made in the Waste Less Recycle More initiative. Further, un-enforced laws and regulations distort the market and create an un-level playing field in the commercial sector. The hardworking and compliant operators (which is the majority of industry and local government) will always comply with the Government's objectives, whilst others will take the risk that they will not be caught or if they are requested to show cause the penalties will either be insignificant - or they will mount legal challenge (for example St Marys Recycling & others v The NSW Government). To this extent, WCRA believes it is in the interests of the Government and the community for us to be provided the opportunity to review draft laws & regulations (as a quick practicality check prior to general release will increase the prospect of better waste management outcomes);

- In relation to the disposal of general waste “NSW is not an island”. When it comes to waste management laws in NSW, the high pricing structure has created commercial opportunities for the long distance transport of waste to other jurisdictions. WCRA first brought these concerns to the attention of the EPA and the NSW Government in July 2012 and it is extremely frustrating that an effective solution has not yet been found;
- There have been recent reports that an estimated 30,000 tonnes per month of general solid waste from the Metropolitan Levy Area is being transported for disposal to SE Queensland;
- We have also read statements that 64,000 tonnes per month was transported from NSW for landfilling in SE Queensland in the 3 month period ending October 2016;
- 30,000 tonnes per month transported interstate equates to a NSW waste levy avoidance of \$49,000,000 pa (whilst 64,000 tonnes over 3 months = \$26,000,000 of levy avoidance);
- In recent years almost every Member has at some stage expressed the view to WCRA that the NSW Government and the EPA should be encouraged to provide better, workable laws and regulations for our industry. These laws and regulations relating to waste management have a major impact on the operations and costs of our Members’ businesses.

2 Construction and demolition waste industry reforms

- The document refers to the requirement for mixed loads of waste to be unloaded and spread on a surface. There should be a clear definition of what is meant by the term “spread” - along with a definition of the term “surface”. For example, is it a concrete pad with bunds or a hardstand area, under cover, dust suppression, etc.?
- Many of these issues have already been deliberated between EPA and WCRAWMAA C&D Group in the development of the draft Asbestos Protocol for C&D recycling;
- The term “processing” needs to be clearly defined.
- There should a definition in the Regulations of the term “recycling” (to assist EPA, we attach a proposed definition to this submission at schedule A);
- The overwhelming view of WCRA Members is that there needs to be a single resource recovery target for C&D waste and that same target should apply to each and every facility irrespective of the size of the facility. If the WARR strategy target for the C&D sector is 80% by 2021, then this same target should apply to all facilities, although industry could well argue that it was not meaningfully consulted in the setting of this 80% target;
- It is our view that the target for the C&D sector should start at an agreed rate (70 to 75% in the 12 months ending 30 June 2018, and only increasing following real consultation with industry (say - to 75% to 80% by 30 June 2021);
- The setting of a target may create unintended consequences. A C&D recycling facility might be unwilling to accept a difficult-to-recycle mixed load of C&D waste at all - if it were to result in the failure to achieve the required diversion target. Some thought needs to be given to this issue;
- A number of Members have reported to WCRA that more of their customers are undertaking some recycling on-site prior to waste being sent in bulk bins and tippers to the Member’s facility. We submit that the EPA would probably be unaware of this on-site recycling and in our view these Members should be entitled to seek a credit for the on-site recycling;
- **Example:** Member (ABC Co), operates a small licensed facility in the Sydney area, undertakes some initial recovery (concrete, soil, bricks & metal) then sends the balance of the residual mixed material for further processing at a more sophisticated waste facility (XYZ Co), also in Sydney. XYZ Co then bulks this waste with all other waste processing inputs and no doubt will be expected to achieve the 80% target imposed by these regulations. Will ABC Co then be able to request a credit in tonnes from XYZ Co which the EPA will recognise to ensure that ABC Co complies with its 80% diversion obligations? If there is no credit provided to ABC Co then it will not achieve its targets;

- Alternatively, the EPA might agree to set ABC Co a lower target - say 35% or 40%?
- Continuing with this example... ABC Co has removed all of the easy-to-recycle heavy components of this waste, delivering only the light fraction to XYZ Co. This will make it very difficult for XYZ Co to then achieve its 80% compliance target;
- Where a business has multiple recycling & transfer sites (with one centralised processing site) provision will need to be made to ensure that the target is achieved over multiple sites;
- A group of Members have expressed concerns to WCRA that the EPA may find it difficult to enforce target compliance. It is perceived that the proposed penalties for non-compliance (with targets of \$15,000 for a corporation and \$44,000 if imposed by a court) may not prove to be a sufficient deterrent. Potential profits may dwarf the impact of these penalties many times over. We believe further consideration should be given to the issue of enforcement and the level of penalties;
- Members have requested urgent clarification on the issues associated with timber recycling and re-use. WCRA members have highlighted that timber re-use and recycling needs to be prioritised for funding from Waste Less Recycle More to avoid market failure & to achieve the diversion targets set for the C & D waste sector;
- The mixing of waste types by the generator means it can often be difficult to determine what constitutes C&D waste and what constitutes C&I waste. For example the waste in a skip bin from a home renovation may also contain old toys, furniture, clothing and garden clippings, etc. Across the Metropolitan Levy Area, there are hundreds of such skip bin movements in any given week. Members believe industry needs to be provided some specific, further clarity on the waste classification system. This is an important issue for many of our Members who operate mixed waste facilities and need to understand if the 80% diversion target at a waste facility will be applied to all incoming waste at the facility.

3 Improving performance at landfills

- To minimise confusion and the potential for rogue operators to profit from loosely understood terminology, the term “mixed loads of waste” should be clarified and defined in the regulations;
- WCRA strongly agrees with the recommendation that landfills should not be able to exhume waste, send it off-site for long distance transport and disposal at interstate facilities (and obtain a Waste Levy refund);
- WCRA strongly agrees with the recommendation that landfills should not be able to operate as de-facto transfer stations, send mixed loads of waste off-site for long distance transport and disposal at interstate facilities (and obtain a Waste Levy refund);
- These issues are the basis for significant dissatisfaction amongst law-abiding operators and their prompt resolution is key to the provision of a level playing field for the industry;
- The aim of the Waste Levy is to reduce the amount of waste being landfilled and promote recycling and resource recovery. The Waste Levy should not be able to be used to provide a subsidy for the cost of long distance transport and resource recovery avoidance;
- It should be noted that some landfills scavenge or recycle materials (metal, concrete, timber, furniture, mattresses, etc.) and all facilities should be encouraged to continue with these recycling and re-use practices. The proposed regulations should not discourage these activities;
- For example, a Member has informed WCRA that mattresses and bases are stockpiled and periodically collected from their landfill by the local Men’s Shed. These are dis-assembled to recover timber for their projects, scrap steel for recycling and other materials which are then landfilled (if no other re-use can be found). In addition to being a desirable waste management initiative, this undertaking also has social enterprise benefits allowing the Men’s Shed to generate an income. If the consultation paper proposition becomes law, by extension there is a concern that the landfill would be denied a levy deduction when these recovered materials go off site and are genuinely recycled;

- Similarly an offence to exhume waste should not apply, where the waste being exhumed is proposed to be lawfully disposed off-site in accordance with an EPA approved environmental or operational requirement or to comply with a directive from another regulatory body (say the Fire Brigade or Hazmat or Safe Work NSW or the NSW Police, etc.);
- Regulations should always endeavour to avoid unintended consequences on any desirable waste management initiatives.

4 Improving handling of asbestos waste

- The delay in the finalisation of the Asbestos Protocol in C & D recycling is viewed with concern by Members and the waste industry generally. The WCRA Executive received a personal undertaking from the NSW Minister for Environment the Hon. Mark Speakman in December 2015 that this Protocol would be finalised by end of the 1st quarter in 2016. As of today's date the Asbestos Protocol is yet to be finalised. Based on our discussions with EPA we now understand that this protocol will be finalised by latest March 2017;
- Some Members have reported to WCRA instances where the lack of an Asbestos Protocol in C & D recycling has resulted in a suspension of C & D recycling activities. One Member has advised WCRA that all concrete, brick, ceramic and tile recycling has stopped in the Southern Highlands (due to the risks and the costs associated with recycling). Perversely, the community of the Southern Highlands now pays \$397 per tonne for this waste stream to be sent directly to landfill. This is a poor waste management outcome. Clarification of the Asbestos Protocol and support from NSW EPA to help such recyclers to understand the need to address both WHS and resource recovery aims would be helpful;
- There is a significant risk that the target recovery rate of 80% (C & D sector 2021) will not be achieved if the issue of asbestos in the recycling sector is not addressed as a matter of the highest priority;
- Although not referred to in the discussion paper, several Members have again pointed out that since the aim of the Waste Levy is to reduce the amount of waste being landfilled and promote recycling and resource recovery it is counterproductive that the waste levy apply to the proper & lawful disposal of asbestos.

5 Clarifying the application of transported waste deductions

- WCRA supports the proposal that a waste levy deduction should only be available to a facility where it is lawfully and genuinely sending waste for recycling and/or re-use;
- The regulations should be very clear that a waste levy credit is not available to any facility that is transporting waste to another facility, unless the 80% recovery target is being achieved;
- All facilities that receive waste and on-forward waste including intermodals, transfer stations, recycling facilities, MRFs, processing sites, landfills, etc. should be required to have the appropriate planning approval and an Environmental Protection License;
- The POEO Regulations (in particular clause 16) should be reviewed to close the door on deductions (waste levy credits) for the transport of waste to interstate landfill facilities.

6 New eligible operational purpose deductions

- WCRA supports the controlled and lawful use of waste-derived, fit-for-purpose materials by resource recovery facilities.

7 Clarifying the application of the Waste Levy at resource recovery facilities

- For clarification it would be helpful to add a 4th dot point to the list of potential triggers for levy liability. WCRA suggest the words "or if the waste is sent for disposal at a facility that is outside of the waste levy area in which the waste is generated";
- A number of Members have proposed that the Waste Levy liability (which is now reported by all facilities) be paid to the EPA as a net amount based on all waste received with a deduction

allowed for tonnes transported to lawful recycling facilities, for lawful re-use, to valid export markets, etc. Written verification should be required for any such deduction.

8 Monitoring waste at licensed waste facilities

- WCRA supports the requirement for video monitoring at all waste facilities. However the video data should only be retained for six (6) months due to the excessive storage requirements. An exception could be made in circumstances where EPA has concerns and directs the facility in writing to keep records for a longer period;
- WCRA suggests that funds could be provided under the Waste Less Recycle More initiative to fund the acquisition of appropriate monitoring and data storage equipment by waste facilities.

9 Improved waste transport

- The issue of general waste transport licensing is not covered in this paper, but is very relevant to achieving better waste management outcomes in NSW. WCRA has long argued for the re-introduction of a general waste management transport licensing system. For many years the argument against its reintroduction has been the Government's desire to reduce red-tape. The multiple mandatory procedures and requirements proposed for the C & D waste sector in this document highlight that this is not a valid argument. Waste transporters are the nexus between all waste generators and all waste management disposal & recycling facilities. We cannot have a sophisticated waste management system with complex laws and tough targets without this very significant part of the system being addressed;
- The Proximity Principle has very clearly not been a success and appears not to have been enforceable. In its current form, it is not working and we therefore support the removal of the Proximity Principle;
- Nevertheless, the issues associated with long distance transport continue to be very concerning. Aside from the landfill-specific changes restricting the exhuming of waste and the re-mixing of waste, it's difficult to see how any of the reforms in this Consultation paper will provide the EPA with the power to effectively address this very significant issue;
- A number of WCRA Members' businesses which genuinely supported the EPA and the NSW Government by complying with the Proximity Principle have lost considerable business revenue to those which have chosen to ignore the Proximity Principle;
- The NSW EPA should demonstrate the leadership required by pushing for harmonisation of all state and territory regulations to end the unnecessary transportation of waste;
- WCRA supports the transport of waste to facilities that will use the resource for reuse or recycling. However, WCRA Members have suggested that the facility accepting the waste should have similar or better environmental performance standards than those in NSW to justify the transport;
- Several Members have pointed out that any business model based on cheap commercial pricing in the market place, limited or sham recycling and long distance transport to cheap, lower standard SE QLD facilities undermines the investment of the Waste Less Recycle More initiative;
- Considerable volumes of waste are being transported over long distances with the intention of avoiding the NSW Waste Levy. This unnecessary transport greatly increases risk of a major accident or spill, in addition to increased vehicular emissions.

10 POEO General Regulation: changes to land pollution offence

- WCRA supports the EPA in changes that will decrease the incidence of land pollution.

11 POEO Act: changes to licensing requirements

- No comments relating to these changes have been received by WCRA

Closing comments

It is the strongly held view of WCRA and its Members that any changes to the legislation must result in laws and regulations that can be enforced by the EPA. If more resources are required, then this requirement should be addressed. Further these reforms should be designed to create a level playing field for the industry. This will require prompt & on-going regulatory enforcement.

WCRA also acknowledges the invitation from the EPA for WCRA & WMAA C&D Group representatives to meet on 23rd November 2016 to begin the process of developing guidelines for a better C&D waste sector.

As always WCRA will offer whatever assistance is required to EPA and Government to ensure compliance with NSW' waste management laws and regulations, along with the efforts required to achieve the objectives of the Waste Less Recycle More initiative.

Thank you for the opportunity to provide this submission. We would be more than happy to provide any required clarification.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Khoury', is positioned above the printed name.

Tony Khoury

Executive Director

Attach.

Schedule A

This schedule forms part of the WCRA submission to the NSW EPA's consultation paper – "New minimum standards for managing construction and demolition waste in NSW, and other reforms for managing waste"

Lawful recycling (practical elements – WCRA view)

The receiving facility must have-:

1. Valid, lawful & relevant Development Consent or a Major Project
2. Be compliant with all relevant operational conditions;
3. Landowners consent (if required);
4. Relevant Environmental Protection Licences (where applicable);
5. Approved environmental management systems;
6. Lawful operating hours as per Consent / Approval;
7. Identified waste streams, volumes, outputs & stockpile heights (stockpile management);
8. Appropriate machinery and clear signage indicating recycling activities;
9. Properly trained staff, with adequate supervision;
10. Clear end-use of the product (customer / market for sale);
11. Clear process for the segregation of all in-coming materials;
12. Carrying out all activities in a manner that is compliant with the law;
13. The vehicle transporting the load to the recycling centre should be compliant with all relevant POEO regulations including a licence (if required) and carrying paperwork that is supportive of the above.

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