

INQUIRY INTO 'ENERGY FROM WASTE' TECHNOLOGY

Organisation: Waste Contractors and Recyclers Association of NSW
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Partially
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Suite 2, First Floor
12-16 Daniel Street
Wetherill Park NSW 2164

PO Box 6643
Wetherill Park BC NSW 2164

Phone: (02) 9604 7206
Fax: (02) 9604 7256
memberservices@wcra.com.au

ABN 72 805 135 472

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Portfolio Committee 6
Upper House Committees
Legislative Council
Parliament of NSW
Macquarie Street
Sydney NSW 2000

Attention Ms Kate Mihaljek

Via e mail as PDF file to portfoliocommittee6@parliament.nsw.gov.au

Re – NSW Inquiry into Energy from Waste (expanded terms of reference)

These submissions elaborate on the matters that WCRA has raised previously.

Opening comments

The whole industry wants laws and regulations that are enforceable, that provide certainty and a level commercial playing field. Proper, lawful, safe and sustainable waste management practices are desirable activities and the provision of waste management services is an essential service.

The importance of the role that the waste management sector plays in the proper collection, transport and safe disposal (and/or processing) of waste and recyclables cannot be emphasised too strongly. It is only with the cooperation of a strong regulatory authority and the legitimate waste and recycling industry that environmentally safe management of waste and recyclables can be consistently achieved.

The EPA is faced with the challenge of regulating to stamp out illegal or rogue operators (who are constantly looking to exploit loopholes in the law), but also working with and supporting the legitimate, law-abiding sections of the industry (who are constantly struggling to compete on a level playing field). These law-abiding operators actually represent the majority of the industry.

WCRA has Members across NSW from all sectors of the waste management industry including scrap metal reprocessing, operation of MRFs & transfer stations, general recycling, general waste collection & transporting, composting, C&D waste reprocessing, who have consistently expressed frustration with the absence of even handedness of EPA staff and the general performance of the EPA.

The EPA has consistently failed to meet its commitments to actions and deadlines and basic communication standards such as acknowledging correspondence are often ignored. Many of the legitimate waste and recycling operators have expressed their concern that consultation often appears to be a mere 'tick the box process' and that their opinions based on years of experience is disregarded.

There is a strongly held perception by many legitimate operators in the waste and recycling industry that the EPA prefers a confrontational approach to dealing with industry – rather than trying to work collaboratively towards common goals.

Example 1 - proposed scrap metal reforms

- At a meeting on 21st August 2017, EPA Staff made it very clear to representatives of the scrap metal industry that the NSW EPA is neither interested nor concerned that these proposed

regulations are at odds with Victorian and QLD laws and regulations or that as a result NSW might lose scrap metal recovery and employment opportunities to other states;

- With regard to the misgivings of metal recyclers that the proposed reforms (including requirements for concrete hard stands and roofing at all scrap metal yards), will result in higher costs, making operators uncompetitive against other markets that generate scrap metal , - there was no acknowledgment from EPA of the validity of this concern;
- One high profile multi-national operator stated that if these reforms proceed 'the additional costs will make our scrap metal business uncompetitive and we may have to consider closing our 8 yards across NSW', EPA staff did not show any concern or understanding of the implications related to the issues;
- Finally, over many years WCRA has repeatedly expressed to the EPA the offer to provide it with a consultation and feedback on 'draft ideas' prior to documents being released. This did not happen in this case and the result was the circulation of a flawed consultation document which has caused tension and anxiety for legitimate, law-abiding operators.

There is a widely held perception within the NSW waste management industry that the EPA (& the NSW Government) is failing to support legitimate business operators across the sector by strongly regulating and enforcing compliance from the "illegitimate" rogue operators. The EPA declares that it impartially and equitably enforces the current environmental laws and regulations, while the NSW Government remains to be convinced that NSW has a problem with its waste management laws and regulations - and the level of resources available to the EPA in enforcing compliance.

Example 2 - Mushroom Land Pty Ltd, 120 Martin Road, Badgerys Creek. 2086

- EPA notice no. 1542352, dated 4th September 2017
- The EPA first became aware of alleged land pollution at this site on 7th June 2016
- In excess of 30,000 m² of unprocessed demolition waste to a depth of up to 5 metres has been spread across the site. This waste also includes used tyres and asbestos.
- On 12th July 2016 the EPA proved through samples tested by the EPA's laboratory that the demolition waste included asbestos (Chrysotile, Crocidolite & Amosite)
- The site does not have an Environment Protection Licence (EPL) from the EPA;
- The site has no consent or approval from Liverpool Council or NSW Department of Planning and Environment to operate as a demolition waste facility;
- A Draft Clean-Up Notice was served by the EPA on Mushroom Land on 2 August 2016;
- The site continued to receive waste;
- In the 15 months it has taken (from 7th June 2016 until 4th September 2017) for the EPA to issue a Notice of Clean-Up Action, the operator of this site has continued to undercut the legitimate law-abiding industry.

Example 3 - Minto Recycling Pty Ltd

- In October 2017, the EPA commenced civil proceedings against Minto Recycling for receiving over 120,000 tonnes of waste in this reporting year, whereas Minto's EPL stated tonnages received "must not exceed 30,000 tonnes"
- A hearing is set down for 6-8 November 2017
- The EPA has available to it an on-line waste levy reporting portal, which could have been used to pick this breach up earlier in the year when it became apparent the threshold would be exceeded.

- For the operation to have a financial incentive to comply with its consent, the prospective fine would need to be of a similar order of magnitude to the profit available by non-compliance.

What are the causes of illegal tipping & long, distance transport?

- Avoiding the payment of the NSW waste levy of \$138.20 (Metropolitan area), \$79.60 (Regional);
- The high cost of operating (and using) landfills and transfer stations which comply with NSW Planning and NSW EPA regulations
- The low cost of tipping at SE QLD landfills where there currently is no waste levy;
- Failure by the NSW Government to review regulations that currently allow landfills to exhume waste and claim a waste levy refund of \$138.20 per tonne. Further some landfills are allowed to operate as de-facto transfer stations (no relevant DA consent or an EPL), also claiming a waste levy refund;
- Inadequate enforcement, allowing illegal or criminal operators to tip at unlawful sites;
- Regulations and laws that haven't kept pace with the higher value of waste in NSW;
- A rogue element that has little regard for the laws, regulations and waste management objectives of the NSW Government. Quite often these rogue operators have more cunning lawyers than the Government, build the cost of fines & penalties into their business models and have little concern for reputational issues.

Proposed solutions

- EPA to exercise its regulatory powers under the POEO Act and prosecute more offending individuals / corporations;
- Review the EPA to determine the adequacy of the resources required to better regulate all parts of the waste management sector. EPA should be provided with additional resources & greater enforcement powers to shut-down offending sites, seize equipment & impose greater financial penalties;
- Develop the Protocol to introduce a Monetary Benefits Order to enable the Land & Environment Court to order, as part of the penalty for committing an offence, an additional penalty which represents the financial benefits acquired by the offender (i.e. any financial profits as a result of committing a breach are paid as part of a Court order). (See section 249 of the POEO Act). Such profits may be substantial. Many operators simply factor in penalty notices, fines etc as part of the cost of doing business in the NSW waste industry. The general principles of this Protocol were introduced in EPA consultation with industry in June 2016 and nothing has happened since;
- Brief regulatory impact assessment business case for a revised, earlier collection of the NSW Solid Waste Levy at transfer stations and waste processing facilities. This would discourage illegal waste activities and long-distance transport (a copy of this document is attached to this submission);
- Formal training of EPA Officers, in order for them to better understand the waste management sector. It is important that EPA staff comprehend that they could be supporting and guiding the industry (including the provision of regulatory advice) as opposed to heavy handed policing & penalising the more compliant sector of the industry. Such training should also ensure that EPA staff better understand the commercial and practical realities of the industry and that an efficient, well-regulated waste industry would assist the NSW Government to achieve its stated waste management objectives; It is not suggested that the EPA should decrease enforcement of compliance, but it must be equally applied to the illegitimate sector of the waste industry.

Yours faithfully

Tony Khoury
Executive Director