



6 June 2014

NSW Environment Protection Agency
By email: waste.reform@epa.nsw.gov.au

To whom it may concern,

Re: Comments on the Protection of the Environment Operations (Waste) Regulation 2014

Thank you for the opportunity for Southern Sydney Regional Organisation of Councils (SSROC) to provide feedback on the Protection of the Environment Operations (Waste) Regulations 2014 (the Regulations).

Together, the 16 member Councils of SSROC cover an area of almost 680 square kilometres and a resident population of nearly 1.6 million people, roughly one-third of the population of Sydney. With illegal dumping a significant burden on our Councils and illegitimate waste management processes rife throughout the industry, broadly SSROC welcomes development of the existing Waste Regulation (2005) and its new provisions that aim to reduce risks to human health, the environment and maintain the integrity of the waste levy framework.

Whilst specific comments on each part of the Regulations are provided below, I would first like to point out that without the release of the *Waste Levy Guidelines*, which are referred to frequently throughout the Regulations and which heavily impact on the measures in the Regulations, it is difficult to fully assess the implications the Regulations will have on our member Councils and wider stakeholders. Making these guidelines available as soon as possible will enable greater understanding of the proposed changes.

Part 2: Waste levy and monitoring requirements & Schedule 1 of POEO Act: Licensing Thresholds

SSROC has concern that the blanket approach to the reduction in licensing thresholds and levy extensions, along with stockpiling limits and additional monitoring requirements, places an increasing financial and administrative burden on Local Government waste facilities, regardless of operating lawfully.

Under these conditions a number of SSROC Council facilities will be required to comply with the Regulation imposts, despite handling low-environmental impact materials and undertaking regular reporting to the EPA.

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In its attempt to capture unlawful waste facilities and operators, the Regulations will capture small-scale Local Government facilities, causing them to face additional financial exposure in practically implementing systems and accounting for the waste levy, as well as increased administrative burden and costs from the installation of weighbridges and other equipment. These direct costs are likely to be passed on to the users of waste services – our ratepayers, as will indirect costs to Councils from waste service providers, as they bear the costs as a result of the Regulations.

Another concern for Councils that own or operate facilities, which will require an environmental protection licence as a result of the lowered thresholds, is the costly and time-consuming exercise required to apply for a license, which will also expose those Councils to increased costs and risks under the recently gazetted 'risk-based licensing' reforms.

SSROC is also concerned that there is currently a lack of clarity on where Energy from Waste (EfW) facilities stand with regard to the proposed levy on materials received. Although, theoretically, all levy liable waste should be accounted for, and therefore either paid for by Councils or deducted/exempted, in practice this may prove more difficult. Little material is sent off-site from EfW facilities and that which does, inevitably leaves the facility as a very different weight and material category to what was received. Likewise, in AWT and FOGO processing, mass can change over time; particularly increases or decreases in water mass so that what enters a facility may have a different mass to that which leaves the facility, or that what enters the next scheduled waste facility (such as recycling facility or landfill). The result being that Councils will be liable for any shortfall that cannot properly be accounted for. Similarly, how, if at all, will the levy be extinguished/accounted for, for waste that is converted into Refuse Derived Fuel or recyclables for overseas transportation to lawful facilities?

Comment: That Local Government facilities be exempt from the waste levy liability. If this is unsuccessful, then the EPA ensures funding is available to meet the increased direct costs and requirements for Councils to comply with the Regulations.

That the NSW EPA provides exemption for Energy from Waste and Advanced Waste Treatment facilities for levy liability in the same manner as that provided to composting facilities.

Part 3 - Waste Tracking

With the unintended consequence of waste being disposed of inappropriately and increasing amounts of waste being transported to Queensland resulting from increases in the NSW waste levy, SSROC supports Option WT3 – Waste Tracking, as a measure to reduce: illegal dumping, interstate movement of wastes and associated road congestion impacts. However, as with all Regulations, the efficacy of these measures will require considerable administration and enforcement by the EPA.

Part 4 - Management of Special Waste

Illegal dumping of asbestos, tyres and clinical wastes is a concern of Local Government; as such, SSROC supports Option SW3 – monitoring the movement of special wastes, as a mechanism for managing unlawful disposal and illegal dumping of waste, whilst protecting the health of the community.

However, whilst this measure is likely to provide a disincentive for illegal dumping by licenced operators, it fails to provide mechanisms that capture the smaller unlicensed operator dumping smaller amounts of asbestos and waste tyres, which are a large problem for Local Government.

Part 5 - Prohibition Against Using Certain Wastes for Growing Vegetation

SSROC supports Option RW2, which prohibits the use of specified residue wastes for the purpose of growing vegetation. SSROC feels it to be an appropriate measure to minimise adverse environmental and health impacts associated with the application of industrial residue to land. This option will assist in maintaining soil integrity, whilst avoiding risk of harm to the environment and human health.

Part 5a – WaSIP: no longer relevant

Whilst SSROC welcomed the replacement of WaSIP, which focused too greatly on non-strategic projects, with the Waste Less, Recycle More (WLRM) initiative, it is of the view that a higher hypothecation of waste levy funds should have been made available to Local Government and/or to the waste and resource recovery industry more broadly.

As it stands, the direct hypothecation rate for councils under WLRM is somewhere between 36% and 41% (LGNSW, 2013). This is even less favourable than historical hypothecation rates over the long term (53.5%). In undertaking SSROC's action planning and prioritisation for the Regional Waste Strategy, it is apparent that strategic projects such as the establishment of important resource recovery infrastructure (AWT and EfW facilities), community recycling centres, education/awareness campaigns and illegal dumping campaign, will directly address the region's priorities whilst providing the greatest opportunities to meet resource recovery targets. SSROC believes a higher allocation of funds to Local Government for the purpose of contributing to these strategic areas should have been permitted.

Comment: That future funding programs increase hypothecation for Local Government.

Part 5b - Recycling of Consumer Packaging

SSROC feels it is appropriate to apply resources to regulating recycling of packaging waste and setting targets for the recovery of material used in packaging, so long as the provisions are adhered to by industry and monitored by the EPA for compliance.

New Provision - Land Pollution Offence

SSROC supports a clearer definition of what constitutes land pollution and feels that the EPA's preferred option – LP2, is constructive. It will assist in the deterrence against the

unlawful disposal of certain types of waste, whilst enabling easier prosecution by Local Government rangers/compliance officers, of offences involving these wastes.

Right of Appeal

Whilst the POEO Act makes appeal to licensing decisions possible, there is no provision in the Regulations enabling legal appeal. SSROC is concerned that this could have a destabilising effect on the industry. Local Government depends on the industry to make substantial investments in resource recovery infrastructure: the lack of avenue for appeal against a decision will increase the risk associated with those investments, and result in higher prices to compensate for increased risk, or a reduction in the willingness of stakeholders to invest at all in the industry.

Comment: That stakeholders should be permitted the right of appeal against an EPA decision.

Conclusion

SSROC broadly supports the objectives and provisions of the Protection of the Environment Operations (Waste) Regulations 2014. However, we have some concerns surrounding the impacts of its implementation, and think that there is scope to improve on the obstacles it poses to Local Government, namely regarding: licensing thresholds, levy-liability and monitoring requirements, and the role of Energy from Waste. In light of the yet to be published Guidelines and their importance to the Regulations, I would like to request that the EPA keep consultation open until the draft Waste Levy Guidelines have been released.

Thank you again for the opportunity to provide feedback. If you would like to discuss or to expand on any aspect of this submission, please contact me or Helen Sloan, Program Manager, on 9330 6455 or ssroc@ssroc.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan Northey', with a long horizontal flourish extending to the right.

Alan Northey
General Manager
Southern Sydney Regional Organisation of Councils