



9 December 2019

Ms Kathy Giunta
Director, Resource Recovery Policy
Waste and Resource Recovery Branch
NSW Environment Protection Authority

Via email: info@environment.nsw.gov.au; Kathy.Giunta@epa.nsw.gov.au.

Dear Kathy

Mixed Waste Organics Outputs Position Statement and Phase 2 Funding Package

Thank you for this opportunity to provide our response to the position statement and feedback on the phase 2 funding package, and for accommodating our request for a little more time in which to consult our member Councils. Our comments are attached.

If you have questions or would like to discuss our submission, please contact me or Helen Sloan, Program Manager SSROC, on 02 8396 3800 or ssroc@ssroc.nsw.gov.au.

Yours faithfully,

A handwritten signature in black ink that reads 'Dougall'.

Namoi Dougall
General Manager
Southern Sydney Regional Organisation of Councils



Attachment

Mixed Waste Organics Outputs Position Statement and Phase 2 Funding Package

Submission to NSW Environment Protection Authority

by email:

info@environment.nsw.gov.au



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1 Introduction

The overnight revocation by the EPA of the Mixed Waste Organics Outputs (MWOO) Resource Recovery Order¹ and Exemption² (RRO&E) in October 2018, and the subsequent October 2019 announcement by the EPA that it "... does not intend to grant any general exemptions or issue any related orders allowing MWOO to be used as soil amendment" (**Revocation**) has had, and will continue to have, a major detrimental effect on councils.

Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. SSROC includes some of the most densely populated parts of Sydney. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney, dealing with approximately 20 per cent of NSW waste.

2 Background

2.1 SSROC Affected Councils

Eight of SSROC's member councils are directly affected by the Revocation: Bayside, Burwood, Georges River, Inner West, Randwick, City of Sydney, Waverley and Woollahra. City of Sydney and Randwick councils were receiving waste treatment services from SUEZ, and the others from Veolia Environmental Services. SSROC is closely involved in the contracts with Veolia, and is a member of the Performance Management Committee with representatives of the six councils. This submission therefore refers often to Veolia's Mechanical Biological Treatment (MBT) facility at Veolia's Woodlawn site near Goulburn (Woodlawn), however, most comments apply generally across all the affected councils.

In response to State Government policy to reduce waste to landfill, eight (at the time) SSROC councils began a procurement process in 2008 aiming to dramatically increase diversion from landfill. The councils entered into a waste treatment contract with Veolia in 2013. Under the contract Veolia was to establish a new rail terminal at Banksmeadow to transfer waste from the Southern Sydney Region to a new state-of-the-art waste treatment facility at Woodlawn, to be licensed under the RRO&E. This commitment was made after many years of planning, research and market testing by the councils, conducted at considerable cost.

The decision to enter into contract with Veolia was made after careful evaluation of competitive tenders, primarily based on:

1. Veolia offering technology proven in Europe to substantially reduce the quantity of waste requiring disposal to landfill, thereby assisting the councils to meet the State Government-set waste diversion target for municipal waste;
2. The process would produce an organic product, MWOO, that would be used by Veolia to rehabilitate the heavily contaminated Woodlawn mine site under the Exemption issued by the NSW Government;
3. Veolia would provide new waste management infrastructure in the region at Banksmeadow, generating employment locally;

¹ Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 The compost order 2016

² Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 The compost exemption 2016

4. The process would comply with State Government policy to reduce waste disposal to landfill and all current regulatory requirements.

2.2 Contracts entered into in good faith

The provision of the infrastructure at Woodlawn and Banksmeadow, and appropriate licensing, were conditions precedent in the contract. Following final approvals for the new facilities, obtaining licensing approval from the Government, construction and commissioning, the new waste treatment service commenced in July 2017. The commissioning phase started in late 2016, and the processing of waste commenced in March 2017, gradually ramping up to full production for the first year of operation beginning 1 July 2017. Waste was processed, composted and then matured until in September 2018 the first batch of MWOO was transferred to Heron Resources for use in the rehabilitation of the degraded site under its mining lease. That batch of 2,401 tonnes was the first and only one to be transferred.

2.3 Time and money wasted

The Revocation of the RRO&E just one month later, in October 2018, meant that the MWOO could not be applied to the land, and more MWOO would be useless. The councils' tremendous joint procurement effort over 10 years, although fully compliant with legislation and regulation, and in part driven by the government's own recycling and landfill diversion targets, has led only back to landfill. The Revocation, requiring the MWOO produced to be disposed of to landfill, negates the primary purpose of the waste treatment process – to divert waste from landfill and increase recycling of organic products.

3 Funding Package

3.1 Current situation

The Revocation of the RRO&E has put both Veolia and SUEZ in a position where they are unable to provide the service that they are under contract to deliver. Councils are in a position where they are therefore paying a higher gate fee for general waste to be processed at the agreed price, but are not achieving the landfill diversion outcomes that they are paying for.

Should the councils and/or contractors decide to cease processing services required under the current contracts, a large additional quantity of waste will be directed to the few remaining landfills servicing the Metropolitan area, placing pressure on both the limited capacity and current licensing conditions for those sites. Protracted legal action is also possible as the operator attempts to recover the substantial investment made in developing the treatment facility and accompanying unfavourable media attention.

3.2 Timeframes

SSROC is aware that the Department of Planning, Industry and Environment and EPA are currently working on a twenty-year waste strategy. No timetable has yet been published for its finalisation, but it seems unlikely that this will occur before June 2020. It would be prudent for councils to make significant decisions on their strategic approach to waste management and resource recovery in response to the Revocation of the RRO&E at a time when those decisions can be informed by the NSW strategy. For this reason alone councils should not be forced to make decisions with long-term implications at this time. Both the Phase 1 levy exemption and Phase 2 funding options should remain open at least until the policy direction for mixed waste is clear.

Councils are, in any case, unable at this stage to identify how they will mitigate the impacts of the Revocation of the RRO&E and transition away from MBT processing. The Veolia group of councils entered into a 10-year contract (with an option to extend for another 5 years) in good faith and in accordance with all relevant regulations: their future plans for mixed residual waste were based on that 10- to 15-year planning horizon. It is unreasonable to expect a new strategic approach in the

space of a few weeks, particularly when considering that it has taken the EPA over six years to reach its decision. Councils' legislated procurement process requires the market to be tested via formal expression of interest, request for proposal and/or request for tender. Due to the uncertainty of the MWOO consultation process, the lack of business confidence and the lack of funding provided to both industry and local government, councils are unable to undertake such market testing and thus are unable to clarify the way forward in relation to residual waste management.

The EPA nominates the European Union (EU) approach as best practice. However, the EU is transitioning away from processing to produce MWOO over a 7-year timeframe, and has not instituted an overnight ban. This more considered approach would be far more reasonable in the current circumstances.

SSROC therefore recommends that a more measured approach to the ban be taken, similar to the EU's approach, and that councils and industry be permitted a period of at least the duration of their existing contracts (in the case of the Veolia councils, at least 9 years, being the remaining life of the contract) to plan and transition to a different process for managing residual waste which is approved by the NSW EPA. Given that the current Veolia contract was over 10 years in the making, from initial market sounding to full operations, that period is reasonable.

3.3 Funding required

3.3.1 Funding for service continuity

The current four-month extension of the landfill levy exemption on MWOO does not provide sufficient time for the councils to make an orderly transition from the existing contractual arrangements to alternative arrangements. As noted above the use of MWOO is also being phased out in Europe, but over a considerable time period, to 2027.

Given that any levy incurred as a result of landfilling MWOO would be unexpected revenue and therefore not committed, the government can and should continue to waive the levy. Accordingly, to continue the current waste processing arrangements pending implementation of new arrangements, the councils propose that the Phase 2 Package should provide an extension of the landfill levy exemption on MWOO for the duration of existing contracts (or until such time an alternative waste processing system is implemented). The councils' current processing contracts enable the use of the Waste Levy exemption as the most appropriate mechanism to mitigate the risk of additional financial costs being passed on to councils and ratepayers in the short term while the industry moves to other sustainable uses for household waste. Over this interim period MWOO could be used beneficially for daily landfill cover or for selective contaminated land rehabilitation projects.

3.3.2 Funding for new services

In addition to the time needed to make the necessary transition, there must be provision for financial assistance for councils to make the transition required by the State Government. SSROC therefore asks that, if the EPA persists in its immediate ban, then funding should be provided for councils to:

- develop new strategic plans for residual waste, which will need to include community consultation as well as technical, business and legal advice;
- pay for any interim service costs that would not otherwise have been incurred, including the above mentioned s88 landfill levy exemption;
- run a new procurement, including market sounding, technical assurance, procurement services, and legal input;
- modify existing collection contracts or day-labour collection arrangements if required e.g. if a new bin is required or a different receival facility results in changes to collection truck routes;
- implement the new waste management systems, which will include planning, potentially changes to collection processes, bin configurations and contracts, developing of new education materials, revised development and planning design requirements for waste and recycling services.

All these costs have only recently been met by SSROC affected councils. Having to budget for them again could result in an increase in domestic waste management charges and rates. We therefore ask that all these activities, and any others required as a result of this regulatory change, should be fully funded.

3.3.3 Funding for legal action

It is possible that councils may be exposed to legal proceedings if contracts cannot be re-negotiated or services continued within the existing arrangements. Should legal action be taken, then councils will need funding to enable them to continue service delivery. Provision should therefore be made for this possibility.

3.3.4 EPA Commitment to Funding Councils

Over the past 12 months Veolia has continued to operate the waste treatment facility but with the MWOO produced being disposed of to landfill. Under the Phase 1 Support Package offered by the EPA the landfill levy was not applied to MWOO for this period.

Councils have been prepared to pay a premium gate fee for the waste treatment service over direct landfill disposal to comply with the Government's waste diversion policy and, at the request of the EPA, to continue to process whilst they considered the future options of MWOO which was determined in late 2019. However, the Revocation of MWOO use by the Government means that Veolia is not able to comply with its contractual requirements to the councils and there are limited benefits in continuing to process waste unless the EPA extends the levy exemption for the duration of the contract.

There has been no support for councils under the phase 1 support package and none is being offered as part of the phase 2 support package. Phase 2 support is being offered to the operators of waste treatment facilities producing MWOO to transition to "sustainable technologies", specifically FOGO and/or energy from waste.

When the Phase 1 funding support was announced and did not cover councils, it was made clear that a Phase 2 support package would be "**Support for councils** and industry to transition", however to date the support package information makes no mention of councils. Yet the costs that they will incur will be substantial. We ask that the EPA recognise this, and extend the Phase 1 levy exemption, as well as providing direct funding to local councils for the difference in costs over the life the contract to prevent additional costs being passed on the community as a result of the EPA's decision.

4 Position Statement

SSROC accepts that the Government has made its decision to revoke the exemption. In these circumstances it is important to avoid loss of jobs and capital investment in the AWT industry in NSW should it be forced to close down because it becomes financially unviable. The southern Sydney area, and metropolitan Sydney more broadly, lacks many options for waste management and is keen not to lose those that exist. The joint procurement by the SSROC member councils resulted in two important new infrastructure projects that have delivered jobs in our local area and in the regional locality of Tarago. Every effort should be made to ensure that these important developments not only remain viable but thrive.

SSROC is also concerned at the pressure on councils from the NSW EPA to introduce FOGO processing as the solution for mixed waste, and that the EPA has not fully considered either the potential risks to human health and the environment, or the full implications of this option.

4.1 FOGO as an alternative

Research considered by the EPA to date has not included the effectiveness of metropolitan Food Organics or mixed Food Organics and Garden Organics (FOGO). The research that has been considered conflicts with the experience of some SSROC councils that have conducted trials and detailed studies in this area.

It is also unclear that there is a sufficient market for the larger quantities of compost output that multiple new FOGO systems would generate.

It may also be unnecessary to adopt an approach of wholesale change to the way that mixed waste is managed. New research might identify other uses for the MWOO as it is currently constituted that would not have the same risks to human health and the environment.

Research into FOGO in Europe has revealed the presence of phthalates, and the EPA's own research has identified plastic as the most frequently cited contaminant in FOGO bins. There is a risk that the use of compost derived from FOGO might also be banned in the future due to the presence of the same contaminants that have caused the EPA to ban MWOO application to land.

4.2 Implementing new systems

Furthermore, changing to a FOGO system is not a simple "transition" as stated by the EPA. It would involve a complete change of direction for the councils that have, in good faith and in full compliance with regulations, implemented an AWT solution. As outlined in section 3.3.2 above, such a system would require a huge project involving significant time, resources and long-term investment from councils. Councils wishing to transition from current waste collection systems to a FOGO collection system will:

- Be required to make a large investment in new bins and trucks as the collection service is reconfigured;
- Be required to develop new policy and development design requirements to include for FOGO collection systems
- Be required to make a large investment in community education over some years as the community becomes accustomed to separating food organics at source;
- Need to have an understanding with the EPA for dealing with high levels of contamination for some years (such as possible short-term exemptions from the landfill levy);
- Need an acknowledgement from EPA policy that FOGO may not be appropriate for some Multi-Unit Dwellings/Residential Apartment Buildings and Mixed Use Developments;
- Develop a support program to enable retrofit options for existing developments which have compactors, chute systems for the transportation and storage of waste and recycling;
- Require access to an appropriately licensed waste and conveniently located processing facility with adequate capacity;
- Need to review whether existing contracts can be renegotiated, particularly in respect of diversion rates and processing cost, or if new contracts are required;
- Need to review existing contracts for garden organics processing to identify feasibility of negotiation in respect major changes under the conditions of contract, relating to composition, volumes received, costs and increased contamination rates; and
- Require an assurance from the EPA that standards for contamination levels in the organic products will not prohibit the FOGO strategy in the future. (Note the Jacobs report on high phthalate levels in European compost derived from FOGO.)

Councils wishing to transition from existing contracts to an energy from waste strategy will need:

- Clarification from the EPA on the long-term Waste to Energy Policy;
- Time for market development and testing, as it is clear that the current market for fuel products produced from MSW is very limited and not likely to be available for some years (Industry advice received by SSROC has indicated that, leaving aside the issue of social licence, the

lead time for establishing a dedicated energy from waste facility in NSW will be around seven years); and

- To review whether existing contracts must be renegotiated, particularly in respect of diversion rates and cost.

5 The Future

5.1 The Bigger Problem

SSROC would like to take this opportunity to point out that the presence of unacceptable cumulative levels of the contaminants in question is a reflection of the very high levels of these substances in our everyday lives. We therefore urge the EPA to consider the broader issue of whether these substances should be used in the common way that they currently are, given that they seem to be risky. Food packaging and flame-retardant use are areas where the EPA should focus to eliminate the substances from the waste stream altogether.

5.2 Landfill

The immediate alternative to the application of MWOO to land is landfilling. This is an unacceptable solution that fails to address any of the issues identified by the EPA in relation to MWOO and completely subverts community and council efforts to divert waste away from landfill. Given no other current option, it is essential that the EPA provide councils:

- more time to transition (the length of the current contract, up to 9 years of the extension of the landfill levy exemption);
- the necessary funding;
- Continued acceptance of MWOO production as landfill diversion for the purpose of council reporting of waste diversion performance; and
- a suite of viable options that take into account policy restrictions and metropolitan density issues.

It is Veolia's intention at Woodlawn to use the MWOO as alternate daily cover, subject to a change to licence conditions. Although the material will still be landfilled, it will at least substitute for other alternate daily cover. SSROC would welcome the EPA's timely approval of the amended licence conditions, and ask that the exemption from landfill levy be applied to the cover.

5.3 Mine rehabilitation

The EPA's decision on MWOO is premised upon future agricultural land for the rehabilitated mine site. This basic premise may be flawed, as there are alternatives to this simple scenario. It could be possible for a covenant or similar planning instrument approved by the local council to restrict the future land use as per current requirements for known contaminated land. Or further research into the capping of the rehabilitated mine could specify the requirements for an effective barrier between the MWOO and the potentially agricultural land above. The EPA should investigate such options together with the AWT operators and the mine-site owners to develop viable alternative applications and site-specific exemptions.

5.4 Tailings dam rehabilitation

SSROC understands that Veolia is considering the potential application of MWOO to the tailings dams on the Woodlawn site, since those are already designed to prevent leachate and contamination of the surrounding area. The SSROC is supportive of this option, that would enable existing contracts to remain in effect, and would achieve the diversion levels that were originally intended.

We ask that the EPA and DPIE expedite the process for approval of a site-specific exemption, so that Veolia can once again divert the MWOO from landfill as soon as the tailings dams can be made ready to receive it (SSROC understands that this will be in around 2 years). We also ask

that the EPA provide Veolia with guidance on the criteria that will need to be met for approval, since the criteria that applied to MWOO are clearly not acceptable.

5.5 Refuse-Derived Fuel (RDF)

As noted in section 4.2 above, technically RDF is viable, however its financial viability depends on the existence of a strong market for the fuel. Research, both by Jacobs for the EPA and by Veolia, has indicated that such a market does not exist in Australia. Export markets may be affected by the national ban on recycling exports, and may also not be viable.

Another approach would be to use the RDF on-site to generate electricity, which could be used on-site or potentially exported to the grid. Currently the renewable energy generation sector is affected by constraints on their generation rates imposed by the Australia Energy Market Operator (AEMO) for grid security reasons. Therefore there is currently no guarantee that grid exports would be viable.

While the EPA deems energy from waste to be among “sustainable technologies”, but development is only sustainable if it is socially beneficial as well as environmentally and economically. In NSW there is little acceptance of energy from waste facilities. Without significant and lengthy community engagement this is unlikely to change. SSROC does support working with NSW Government and EPA towards its acceptability in future.

The EPA is in a position to facilitate the development of this industry by providing guidance on the regulations that apply, by expediting applications, and by working with DPIE to develop the markets for RDF. At a broader scale, the EPA could work with DPIE and AEMO to identify suitable sites for energy from waste facilities, and with the Commonwealth Government to recognise RDF as a product suitable for an export market and not as waste that is banned from export. The NSW Government is also in a favourable position, similarly to Western Australia recently, to positively engage the community and address their concerns around energy from waste.

6 Conclusion

SSROC thanks the EPA for this opportunity to comment on its Position Statement and proposed Transition Funding Package. In summary, we recommend:

1. That the EPA acknowledge the substantial potential costs to councils (and ratepayers), and work with councils to minimise those costs and any associated service disruption;
2. Phase 2 funding options remain open until councils resolved their approach to mixed waste;
3. Phase 2 funding to cover the full cost of re-running mixed waste processing procurement projects, including all associated advisory services, collection service changes and education programs;
4. Funding to prevent increases in domestic waste management charges;
5. Funding to enable service continuity in the case of legal action;
6. Councils be allowed time to consider the implications of the forthcoming 20-year waste strategy before making decisions about new processes for mixed waste;
7. The ban on MWOO be phased in over a 9-year period to allow existing contracts to run their course and councils time to plan strategically for the future and to conduct a robust procurement process;
8. Continue to exempt MWOO from the landfill levy, whether it is landfilled or use as alternate daily cover;
9. Continue to accept MWOO production as landfill diversion for the purpose of council reporting of waste diversion performance;
10. Work to continue the operation of existing waste management facilities so that the industry and associated jobs and economic contributions are not lost;
11. Provide operators with guidance on the criteria for site-specific exemptions, work with industry to investigate alternative uses for MWOO, and expedite the process of site-specific exemption for alternatives that meet the criteria;

12. That FOGO is not mandated in NSW, further research into contamination of FOGO in the metropolitan context be conducted, and markets for compost be identified;
13. Commission research into the broader use of the contaminants in food and households generally, and assess whether greater controls are required in these contexts;
14. In relation to Veolia's Woodlawn operation specifically:
 - a) approve the amendment of the licence to permit the use of MWOO as alternate daily cover;
 - b) provide guidance on the criteria for a site-specific exemption for application of MWOO to the tailings dams;
15. Work with industry and DPIE to develop criteria for energy from waste approvals for residual waste, and to identify markets;
16. Work with DPIE and the Australian Government to recognise RDF as a valuable product that can be exported.