



SSROC submission on:

***Resource and Recovery Order
and Exemption Framework
and the
Resource Recovery Innovation Pathways***

**Submitted to the NSW Environment Protection Authority
by email: resource.recovery@epa.nsw.gov.au**

Introduction

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of 12 councils spanning Sydney's southern suburbs, eastern suburbs, CBD, and inner west and covering a third of the Greater Sydney's population, over 1.8m people. Our Councils manage around 655,000 tonnes of household waste each year, which is about 20 per cent of all NSW household waste.

SSROC provides a forum through which our member councils can interact, exchange ideas and work collaboratively to solve regional issues and contribute to the future sustainability of the region. We advocate on behalf of our region to ensure that the major issues are addressed by all levels of government. Our current focus includes the environment, procurement, waste, and planning.

This submission includes responses on two separate yet connected consultations:

1. Section 1 provides SSROC's response to the NSW EPA's consultation on the Resource Recovery Order and Exemptions Framework; and
2. Section 2 provides SSROC's response to the NSW EPA's consultation on Resource Recovery Innovation Pathways.

Section 1: Resource Recovery Order and Exemptions (RROE) Framework

1. Improved information for applicants

The information in the Policy Framework and Application Guideline (Guideline) is a real improvement on information currently available for applicants seeking to obtain a resource recovery order and exemption. The Guideline is useful in setting expectations as to what information, evidence and sampling is required and how the NSW EPA will approach assessment.

2. Inadequacies with Policy Framework

Despite the improvements there are aspects of the Policy Framework and the application process itself that need further refinement and certainty for applicants.

- A set timeframe for application processes. The Policy Framework indicates an aim of 60 days however there are no review or appeal avenues if the NSW EPA delays its assessment processes.
- The Policy Framework does not introduce any internal review process for order or exemption decisions. This is a commitment of the NSW EPA in response to the Wilkinson review which has not yet been addressed.
- The Policy Framework does not encourage or facilitate broader publication of specific orders and exemptions despite improved public availability of orders and exemptions being a commitment of the NSW EPA in response to the Wilkinson review.

3. Approach to revoking orders and exemptions is inadequate

In response to the Wilkinson review, the NSW EPA has committed to developing and publishing a clear process for both the issue and revocation of general orders and exemptions. Part 6.7 of the Policy Framework addresses revocation but in a very general way. It does not outline a sufficiently clear, certain and transparent process applying to revocation decisions that would assist those relying on orders and exemptions for their operations.

Whilst the NSW EPA's [Delivery Plan Towards a Circular Economy: enhancing the NSW Resource Recovery Framework](#) commits in Action A2 to "develop and publish a clear process for issuing and revoking general RROEs" the timeline presented in this Delivery Plan is vague with work scheduled to start from January 2024 until April 2026 with no indication or update available on when the stakeholder consultation process will be scheduled. Given that the title of this RROE consultation includes 'Exemptions', SSROC and many of our stakeholders expected more information on the process for issuing and revoking exemptions to be included in the Guideline.

Councils have historically been severely impacted by the sudden revocation of orders and exemptions by the NSW EPA with little notice, poor communication and ultimately a lack of transparency in its decision making. Public trust in the order and exemption framework has been undermined because of this. There is a real risk that industry participants will no longer rely on orders and exemptions for waste reuse because of the risk of revocation.

To counter this risk, the NSW EPA should develop and publish a framework with which it must approach revocation decisions. That process must be transparent and publicly available for industry participants to understand.

Whilst SSROC appreciates the NSW EPA needs to be able to respond to emergencies and events which present an imminent risk to the environment or human health, most revocation decision making can and should incorporate consultation opportunities at an early stage. Those potentially affected by the decision need to be consulted and have access to the available testing, information and reasoning which is informing the NSW EPA's approach.

When it came to the Mixed Waste Organic Output (MWOO) revocation decision in October 2018, the NSW EPA was acting on information and an understanding of this recovered resource which did not reflect the understanding of councils and their waste service providers, prior discussion to the revocation would have benefited all parties. The NSW EPA made its revocation decision without notice, although it had been researching the matter for at least seven years. The findings of trials conducted as part of that research were not shared with industry or Councils. The MWOO revocation decision had huge financial implications on council contracts, yet councils were not notified prior to the revocation and were not able to access information related to the decision, until after the revocation order was passed and only through presentations provided at information sessions. Access to information on revocations is critical for contractual arrangements but also to enable councils to provide current and accurate information to residents on how and where waste is recovered and any service changes. A report for the EPA, *Human Health and Ecological Risk Assessment, Application of Alternative Waste Technologies Materials to Agricultural Land* was not made available until a year later, far too late for consideration in responding, including in the necessary contract variations. Early consultation with relevant parties is required and this could avoid the mistakes previously made with the MWOO revocation.

An articulated process for revoking orders and exemptions should be reflected not only in the Policy Framework but clearly set out in the POEO Act or Waste Regulation.

The NSW EPA should also consider the possibility of transition funding being made available for those industry members who are adversely affected by significant changes to orders and exemptions, where little notice is given.

4. Contaminant Limits

The Policy Framework does not provide any further guidance to applicants on what contaminant limits they should expect to apply to their recovered resource and stipulated within their order or exemption. Whilst there is no one size fits all approach, greater transparency and certainty for applicants about how the NSW EPA approaches and determines contaminant limits is important. The NSW EPA needs to indicate how this is going to be addressed if it is not part of this Policy Framework.

5. Asbestos Waste and PFAS

The Policy Framework needs to consider whether additional advice, risk assessment and testing requirements are required for key contaminants that can impact different resource recovering waste streams and the potential health and environmental risks. For example, the current resource recovered aggregates order requirement does not reflect the recent advice of the Chief Scientist who has confirmed that low levels of asbestos are acceptable. Conversely, in relation to mulch further testing may be required to confirm no asbestos waste is present.

Further guidance on the level, type and frequency of testing for asbestos and PFAS for existing orders and exemptions is required to make these obligations clearer for producers and consumers. There is a huge variety of testing and sampling that could be done and it can be very costly, consistent requirements are needed.

6. Piecemeal reform

The Wilkinson Review identified fundamental structural issues with the resource recovery framework that go beyond the publication of guideline materials. The Policy Framework and Application Guide provides key information about how the current framework operates. It does not address some of the systemic issues with this framework, including the definition of 'waste', establishing pathways to enable end-of-waste outcomes and streamlining the application of the waste framework to resource recovery and re-use. Consultation on Policy Framework and Guideline is difficult when some of these fundamental and systemic issues have not yet been addressed.

Section 2: Resource Recovery Innovation Pathway

1. Consultation with Councils

The Concept Paper indicates that some planning reform will be required to facilitate those facilities conducting trials under an innovation trial licence (ITL) or existing EPL. The NSW EPA intends to liaise with the Department of Planning Housing and Infrastructure (DPHI) about possible avenues to broaden consent conditions and/or facilitate modifications to permit trials. The NSW EPA has also introduced the possibility of becoming a 'one stop shop' approval authority where an ITL is used.

It is imperative that Councils are also consulted about any proposed planning reforms to facilitate this innovation pathway. In some instances, Councils will be the consent authority if development consent or a modification is required. Further, Councils are regularly consulted for proposals that fall within the state significant development planning pathway and it is often Council waste streams that will provide the feedstock for these trials. Councils should contribute to any reform thinking given its role in the planning system. Councils are also usually the first point of contact for community members if they have questions or concerns so councils need to be aware and be able to direct those individuals in the direction of the appropriate body to contact.

Councils also expect that they will continue to be consulted on the specifics of any state significant development proposals or on proposals part of some separate innovation pathway, as it can provide critical feedback for proposals of this nature within its LGA.

2. Uncertainties with Innovation Pathway

The following matters in the Concept Paper and Innovation Position Statement are unclear:

- When it says the ITL will be volume limited what does this mean and what scale is the NSW EPA proposing?
- The Policy Statement does not clearly outline how the innovation pathway is different to existing activities that fall below EPL thresholds and may be exempt from licensing requirements.
- Varying existing EPLs to accommodate trials at licensed premises could introduce complexities for the subject site. How will the requirements of the trial and the existing EPL operations work together? Is it intended that they will be location specific and will there will be variation to the existing EPL to accommodate this?

3. Information sharing and probity

The Position Paper indicates that transparent reporting and data sharing will be encouraged in the innovation pathway. Other than outlining the different types of information it may involve, the NSW EPA have not articulated what information it would expect a participant to share, the format and platform through which it would be shared with the public and what information would remain confidential and protected.

If this is a fundamental component to the innovation pathway, the NSW EPA needs to formulate a proposal as to what information is collected and shared rather than merely asking for open feedback. Further detail would assist industry participants meaningfully engage with this crucial feature of the innovation pathway.

4. Resourcing

Stage 1 of the Innovation Pathway relies heavily on NSW EPA providing advice and facilitating partnerships in an effort to encourage proposals and applicants through the innovation pathway. For example, the NSW EPA could offer to subsidise batch testing and also dedicate a point of contact to liaise with interested parties as well as conducting inspections. This will require significant NSW EPA resources and we would recommend that appropriate staffing and resources is dedicated towards the innovation pathway.

5. Funding

The consultation refers to the NSW EPA linking proponents with resource constraints to research bodies and universities. The NSW EPA should consider broader opportunities including linking participants to Regional Organisation of Councils (ROCs) who may also be able to provide support and/or the local council where proposed trial will occur.

6. Procurement and probity

Councils and ROCs often have innovation clauses in their contracts with waste providers that require continual innovation as well as including innovation as a key requirement as part of procurement processes. The NSW EPA will need to carefully consider what information is disclosed in any innovation trial (for example, naming Councils or ROCs) in order to avoid probity issues or disclosures that could disadvantage participants.

Thank you for this opportunity to contribute to the discussion. For any enquiries, please contact me by email: ssroc@ssroc.nsw.gov.au, or 02 8396 3800. Please note that although Member Councils have provided information for this submission, it has not yet been endorsed at a formal meeting of SSROC. I will contact you should any issues arise as a result.

Yours faithfully,



Helen Sloan
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Southern Sydney Regional Organisation of Councils