

Our Ref: KAP/SJD/7978514
Enquiries: Shannon Davies
Email: sdavies@solbros.com.au

Level 15, 197 St Georges Terrace
Perth, Western Australia 6000

PO Box 7055
Cloisters Square WA 6850

Telephone: +61 8 9282 5888
Facsimile: +61 8 9282 5855

10 November 2017

www.solbros.com.au

Department of Water and Environmental Regulation
The Atrium, Level 4
168 St Georges Terrace
PERTH WA 6000

Attention: Mike Rowe – Director General

By Hand Delivery

Dear Sir

SUBMISSIONS IN RESPONSE TO WASTE REFORM PROJECT

BACKGROUND

1. We act for Eco Resources Pty Ltd (“Eco Resources”) and Waroona Resources Pty Ltd (“Waroona”).

Eco Resources

2. Eco Resources operates a rural licensed category 62 prescribed premises (being a solid waste depot on which waste is stored or sorted pending final disposal or re-use). In addition to the category 62 licence, Eco Resources also holds a category 57 licence (used tyre storage) and a category 13 licence (crushing of building material).
3. Eco Resources’ solid waste depot services up to 150 different companies each week, consisting of builders, landscapers, skip bin operators, bob cat operators and demolition companies. We are instructed that:
 - 3.1. the solid waste depot takes in approximately 330,000 tonnes of waste per annum for storage and sorting prior to it being either recycled, re-used, transported to other facilities for further processing with other unrecyclable material, or disposed of to various category 63 and 64 landfills;
 - 3.2. the used tyre storage yard holds approximately 200 tyres at any time; and
 - 3.3. pursuant to its category 13 licence, Eco Resources crushes approximately 52,000 tonnes of building material per annum.

Waroona

4. Waroona operates both a licensed category 62 premises and a non-metropolitan licensed category 63 prescribed premises (being a class 1 inert landfill). These facilities service up to 20 local businesses per week, including earthmoving contractors, skip bin operators, and farmers, as well as the general public. We are instructed that:



- 4.1. the solid waste depot takes in approximately 220,000 tonnes of waste per annum for storage and sorting prior to it being either recycled, re-used, transported to other facilities for further processing with other unrecyclable material, or disposed of to various category 63 and 64 landfills; and
- 4.2. the landfill receives and disposes to landfill approximately 150,000 tonnes of waste per annum, a portion of which is received from Perth (i.e. the metropolitan region) based customers, which waste is of course subject to the levy imposed by the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WA) ("**the Levy Regulations**").
5. We are writing on our clients' behalf to express concerns relating to the Waste Reform Project paper ("**the Paper**") which was released by the Department of Water and Environmental Regulation ("**DWER**") for comment in July 2017.
6. Our clients respectfully wish to make submissions to, and enter into discussions with, DWER with a view to addressing the issues with the proposed reforms highlighted in this letter.

SUBMISSIONS

Amendment of the terms "accepted for burial", "waste received", "disposed to landfill" and "disposal premises"

7. Under the current regime, a levy is only payable on "waste received" and "disposed to landfill" at "disposal premises", being premises that are licensed (or are required to be licensed) under the *Environmental Protection Act 1986* (WA) ("**the EP Act**"): ss. 3 and 5 of the *Waste Avoidance and Resource Recovery Levy Act 2007* (WA) ("**the Levy Act**") and r. 4 of the *Levy Regulations*. Under the EP Act, a person is only required to obtain a category 63, 64, or 65 licence for a landfill if waste is being "accepted for burial" (i.e. to be covered with top soil): schedule 1 to the *Environmental Protection Regulations 1987* (WA).
8. Paragraphs 6.2.1 to 6.2.3 and 6.3.1 of the Paper propose amending the terms "accepted for burial", "disposal premises" and "receiving waste at disposal premises" so that the levy would be payable in respect of all premises that "receive, deposit, accept or deliver waste" to be "applied to land" (e.g. through spraying, spreading, placing, filling, reclaiming or contouring the land), not just licensed landfills.
9. "Waste" includes matter, whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment or prescribed to be waste: s. 3 of the *Waste Avoidance and Resource Recovery Act 2007* (WA) ("**the Waste Act**"). Given this broad definition, if the levy is required to be paid by anyone who receives, deposits, accepts or delivers waste to be applied to land, this could arguably extend to almost any activity involving waste. For example, a home owner who "accepts" fill following the removal of a pool (which would involve the accepting of waste that will be applied to land) would arguably be required to pay the levy on the fill, along with whoever "delivers" that fill.

Questions

10. Has DWER considered the consequences of amending these terms in this manner given the broad definition of “waste” in the Waste Act?
11. Has DWER considered that by broadening the term “waste received” to include “accepted, deposited, received or delivered”, this could in effect result in a double payment of levy in respect of the same waste (i.e. by the person who “accepts” that waste and also by the person who “delivers” that waste)?
12. Further to paragraph 11, has DWER considered whether both persons would be liable to pay the levy in such circumstances, or if not, which party is deemed liable?
13. Has DWER considered how it would enforce compliance with the regime in circumstances where the levy could apply so broadly?
14. Has DWER considered the possibility that these amendments will deter the use of recycled materials? Materials such as sand, rubble, mulch, and woodchips and the like, which would fall within the definition of waste if spread or deposited on land, would also therefore become subject to the levy. Further, has DWER considered that these amendments may disincentivise facilities from wanting to receive such materials for cleaning, if a levy is payable to accept or receive that material at those facilities, and a rebate is unable to be claimed for recycling that material as it has been “applied to land”?

Imposing a levy on the storage of waste

15. Under the current regime, our clients do not pay a levy on waste received at their respective category 62 prescribed premises, which facilities are for storing and sorting waste pending final disposal or re-use.
16. Paragraph 6.3.2 of the Paper proposes amending the regime (by removing the purpose element from the definition of “disposal premises” in s.5 of the Levy Act) so that the levy will also apply to waste “received, accepted, deposited or delivered to” category 61A and category 62 premises, being facilities used for storage and sorting of waste. This would also extend to any other sites that accept and receive waste for storage in any capacity, such as transfer stations.
17. If a per tonne levy is imposed on all facilities that store waste for any reason, this would, in effect, require our clients (and any other persons who operate both a category 61A or 62 facility (or a transfer station) as well as a category 63, 64, or 65 landfill), to pay a double levy. Under such a regime, a levy would be payable on all waste when it is “received” for storage and sorting by our clients at their respective category 62 facilities, and again when that same waste is “delivered” to or “received” at category 63 landfills.
18. Further, if a levy is imposed on storage and sorting facilities (being facilities that, once they receive the waste, sort it into waste that can be reused and recycled and waste that is destined for landfill), this may seriously disincentivise recycling in the community. If businesses such as those operated by our clients are forced to increase the prices charged by their sorting and storage facilities (in order to accommodate the requirement to pay the levy), what incentive do

customers have to bring their waste to these facilities as opposed to landfills, where they will be charged the same amount? The motivation to recycle will likely decrease even further if a customer is forced to pay a levy both for their waste to be sorted (through the price charged by the storage and sorting facility), and for any of that same waste that needs to go to landfill (through the price charged by the landfill). The end outcome is that more potentially recyclable waste will go to landfill as customers avoid payment of the double levy.

19. Alternatively, if storage and sorting businesses attempt to absorb some or all of the additional costs associated with a double levy, that will threaten the ongoing viability of those businesses. If the ultimate effect is that some of those business end up closing their doors, then that would in turn result in less waste being sorted, and in turn, re-used and recycled.
20. Paragraph 6.3.2 proposes that the levy would be payable upfront, with a 12-month time limit for rebates on recycled material. However, once waste is received and sorted into recycled material and waste, it is impossible to know what waste was brought to the facility by what person. Therefore, it is impossible for the owners of sorting and storing facilities (such as our clients) to return any rebate to a customer. Accordingly, while this may result in increased profits for owners of storage and sorting businesses (if they decide to increase their prices), this will not motivate the community to recycle.
21. In addition, the broad definition of “waste” (see paragraph 9 above) would mean that these amendments could have far reaching consequences. For example, would a levy be payable in respect of stockpiles of recyclable or re-usable materials while those items are in storage awaiting use? We are instructed that to use up these materials can take time depending on the market for any particular recyclable material. If the levy was to apply to such materials, this would disincentivise owners of storage facilities from storing those materials for future use.
22. Our clients respectfully suggest that these issues could be more practically addressed by imposing time limits for the disposal of stockpiled waste, and limits on stockpile sizes. This would help to ensure that indefinite storage of unprocessed waste is avoided, and that waste stockpiles do not reach a size whereby the operator can no longer afford to dispose of the waste (either to landfill or to a storage and sorting facility), meaning the operator may simply abandon the waste. Reasonable exceptions to any time and stockpile size limits would be required in respect of functioning recycling and transfer facilities, where stockpiles are constantly changing.
23. Another broader consequence of imposing a levy on the storage of waste, together with amending the regime so that it effectively applies to every activity involving waste (not only disposal at licensed landfills), would be that owners of waste collection companies (including skip bin companies) would be required to charge a levy (in addition to any levy charged to transfer the waste to landfill). This is because they are, in effect, “storing” waste for so long as a waste receptacle (such as a bin or a truck) remains on the hirer’s premises. There is a significant possibility that this may result not only in an increase in hire prices for waste receptacles, but also in an increase in illegal dumping by those wishing to avoid paying those higher prices.
24. Any increase in waste collection prices would also be felt in the building industry, as builders would need to factor price increases into their construction costs. This is likely to be felt most keenly at the entry-level end of the residential construction industry: in other words, by first

home buyers. The barriers to first home buyers entering the market are well documented, and any increase in construction costs would only add to that problem.

Questions

25. Has DWER considered that amending the regime so that a levy (that is payable upfront) applies to waste received at storage premises would appear to be inconsistent with s.5(1)(b) of the Levy Regulations, which permits licensees to claim an exemption from the levy for waste that is not disposed of to landfill but is collected and stored at a licensed landfill for reuse, reprocessing, recycling and use in energy recovery?
26. Has DWER considered that by amending the regime in this manner, it will in effect be imposing a penalty on owners of both category 61A and 62 facilities and category 63, 64 or 65 landfills, in that they may be required to pay a double levy in respect of the same waste?
27. Has DWER considered that these amendments could, in fact, disincentivise people from recycling as customers will be paying a levy regardless if whether they recycle waste or not?
28. Has DWER considered whether stockpiles of recyclable material awaiting use will be subject to the levy under such a regime?
29. Has DWER considered the fact that it will be impossible for owners of storage and sorting facilities to return any rebates to customers for waste that has been recycled? Further, has DWER considered whether it has the administrative resources to deal with what will no doubt be a large number of claims for such rebates?
30. Has DWER considered the broader effect that these that amendments could have on other industries, such as the waste collection and building industries?
31. Has DWER considered whether these amendments will apply to local councils in so far as waste is stored in residential bins?

Mandatory Weighbridges

32. Paragraph 6.2.4 of the Paper proposes to amend the Levy Regulations to provide for the mandatory use of weighbridges at all sites receiving waste. This would mean that category 63 premises, as well as storing, sorting and transfer station facilities, would be required to install a weighbridge for the purpose of measuring waste.
33. Waroona has already installed a weighbridge at its category 63 landfill, at its own cost, pursuant to an agreement following discussions with DWER that resulted in modifications to the "CEO approved manner" outlined in the Levy Regulations that were introduced in July 2016.
34. We are instructed by our clients that current weighbridge installation costs amount to approximately \$200,000.00. Accordingly, if weighbridges are to be installed in all of the 357 facilities noted in the Paper, this will cost industry participants approximately \$71,400,000.00.

Questions

35. Has DWER considered that such a requirement will impose a substantial financial burden on private owners of category 61A and 62 facilities and category 63 landfills? Will the proposed "government funding" referred to in paragraph 6.2.4 of the Paper extend to these privately owned and operated businesses?
36. Has DWER considered whether the cost of funding the mandatory installation of weighbridges at category 61A, 62 and 63 premises (being approximately \$71 million dollars) outweighs any associated benefits to the government?
37. If government funding is to be provided, will Waroona also be granted some form of compensation given that it was, in effect, used as a test case for this proposed reform?

Record Keeping and Reporting

38. Paragraph 6.2.5 of the Paper proposes that the regime should be expanded to require category 61A and 62 facilities to not only record the amount of waste received (for the purpose of paying the levy), but also to track where the waste is stored or disposed.
39. We are instructed that, once waste is received and processed by each of our clients' category 62 facilities, it is impossible to know what waste was brought by what person. Accordingly, tracking particular waste in the manner proposed once it has been received and processed by the facility would not be possible.
40. We are also instructed that, currently, there is little consistency between the methods of record keeping used by different facilities (e.g. in the licence conditions or the software used). This leads to variations in the data recorded by each facility.

Questions

41. Has DWER considered how a storage and sorting facility would track the movements of waste after different deposits have been received from different customers, processed together, and moved around the facility to different internal stockpiles?
42. Has DWER considered whether there should be a new universal system of record keeping introduced, to be used by all facilities to ensure consistency?

Suggestions

43. Our clients' position is that the key issue in relation to the waste stockpiling issue referred to in the Paper, is that there appear to be no significant restrictions on who can be granted a category 61A or 62 licence. A possible solution, as an alternative to dramatically expanding the application of the levy to include the storage of waste, could be to simply impose restrictions on what entities can be granted such a licence. The legislation and regulations could be amended to provide that a person will only be granted a category 61A or 62 licence if that person can adequately demonstrate:

- 43.1. an existing arrangement with either a landfill or a recycling facility that will enable them to dispose of the waste within a reasonable timeframe (such as the relationship between each of our clients);
- 43.2. that they have adequate equipment, machinery and staff in place to operate such a facility (to ensure the licence is not simply exploited to store waste indefinitely); and
- 43.3. that they have the financial capacity to pay the levy on any waste that is unrecyclable and required to be disposed to landfill (not dissimilar to the requirements imposed on owners of category 63, 64 and 65 licences).

DWER could then periodically audit licensees to ensure that these requirements have been (and are being) fulfilled and impose sanctions (financial or otherwise) on those licensees who fail to actively recycle their waste or dispose of it to landfill.

44. Has DWER considered whether the current levy should be imposed on all landfills state-wide (not only on landfills in the metropolitan region, or landfills outside the metropolitan region receiving waste collected in the metropolitan area (see s.4 of the Levy Regulations))? This may help to promote further recycling in a wider range of areas across Western Australia.

RESPONSE

45. Our clients look forward to your response, and also request confirmation of:
 - 45.1. what further opportunities our client will have to consult with DWER on proposed reforms;
 - 45.2. how DWER proposes to implement any reforms (e.g. whether reforms will be implemented in stages, or whether a transitional period will apply); and
 - 45.3. the anticipated timeframe for the implementation of any reforms.

Yours faithfully

