



Ref: 2017 81
13 November 2017

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Dear Sir/Madam

SUBMISSION: DWER WASTE REFORM PROJECT

This submission is made in response to the Department of Water and Environmental Regulation (DWER) discussion paper entitled '*Waste Reform Project, Proposed approaches for legislative reform (July 2017)*'. It represents the collegiate view of the members of Kwinana Industries Council (KIC) and has been compiled iteratively with the members.

By way of background the KIC is an incorporated business association with membership drawn from the Kwinana Industrial Area (KIA). The current KIC membership comprises 9 full members, who include all the major industries found within the KIA, and 26 associate members covering the support and service sectors.

The Western Trade Coast (WTC) is the premier industrial estate in Western Australia, covering an area approximately 14km north-south and an average of 4km east-west, on the eastern side of Cockburn Sound some 30km south of the Perth CBD. The KIA forms the heavy industrial core of the WTC.

KIC members employ approximately 5,000 workers directly and another 26,000 indirectly, and its economic activity contributes \$1.6bn annually to the State economy.

The KIC was established in 1991 with its primary goals being to:

- promote a positive image of Kwinana industries;
- work towards the long-term viability of Kwinana industry;
- coordinate a range of intra-industry activities including water quality, air quality, monitoring and emergency management;
- highlight the contribution Kwinana industry makes to community; and
- liaise effectively with local communities, Government and Government agencies.

The KIC, as an industry association, is well respected for what it represents, how it operates and for what it has achieved. It pursues its goals through a range of formal committees set up to provide input on a range of issues of common interest to the KIC member companies.

Committee members are delegates with appropriate experience and authority drawn from the member companies. The output from the various committee activities is then used as the basis for communication to KIC's stakeholders such that Kwinana industry is seen as speaking with one voice.

The KIC appreciates the opportunity to engage with the DWER on the content of the Waste Reform document and participate in a meeting with officers during the consultation period. However, it should be said that the discussion paper, when read on face value, was received with alarm by KIC members and a number of positions, regarding the waste reform program, had been variously communicated to broader industry representatives that were not outlined within the Waste Reform document.

During the briefing attended by KIC, the DWER communicated several points to attendees which provided clarification as to the intended scope of the possible reforms being put up for discussion. This would have been more adequately addressed as part of the discussion paper, including the timelines and full scope of issues under consideration.

I anticipate the Department will receive several submissions from individual industries, and that each will go into quite some detail about how proposed changes might directly affect their business operations and financial sustainability. Rather than repeating their comments the KIC endorses these, and will refer in our submission to the broader issues that relate to industry as a whole.

It is clear the intent of the Minister is for less waste to be produced, to see recycling rates increase, reduce waste to landfills, and achieve better interaction between government departments. Industry agrees with this intent.

The Department has a range of issues it is seeking to resolve by initiating the Waste Reform Project, so it is important that in the interests of industry support, the Department be adequately engaged in the process.

Reform Opportunities

The reform process itself presents some opportunities to clarify and modernise the governing laws, regulations, and environmental policies that drive recycling initiatives within Western Australia. For example, the definition of waste can be redefined and reform of the associated regulations would be beneficial. Improved alignment with the Environmental Protection Act 1986 and enhancement and growth of the recycling/ waste industry would also provide far reaching, long term benefits for the community as a whole.

There is an opportunity to conclude the waste derived materials framework for organisations to apply. We understand consultation on reforming this has been ongoing for a decade, and its resolution could be bundled up in the reform process.

The current regulations make it very hard to recycle tailings and other similar waste streams, and bio-solids. The 'red tape' difficulties have the effect of inhibiting investment in industry innovation. Thus we see opportunities for reuse and recycling some waste streams being parked indefinitely due to the inflexible application of some regulatory definitions and the formidable bureaucracy that has to be cut through.

This review process presents the opportunity to recast the definitions so that they facilitate recycling of these materials, rather than obstruct. This facilitative approach would open up opportunities for recycling and incentivise recycling companies and others to invest in developing new innovative technologies and opportunities.

The Waste Reform document as presented, appears to have broad reaching implications that may counter its primary objectives by dis-incentivising, and in some instances, preventing currently acceptable reuse and beneficiation processes. This will ultimately preclude the capacity building which is the counterbalance required to achieve landfill reduction goals. The reform needs to ensure proactive attention to the broader material lifecycle construct and facilitate building industry capacity to progressively adapt and align with the landfill waste minimisation goals.

Unintended Consequences

It is critical that definitions are clear and unambiguous going forward to avoid any unintended consequence, because once legal definitions are established they become very difficult to undo.

In effect, the intent of a legislative change can become irrelevant if the specific wording doesn't accurately capture that intent. It is for this reason that a full and thorough exploration by the Department through genuine stakeholder engagement is critical to ensuring there be no opportunity for unforeseen consequences to be created. See example below:

An existing company currently beneficiates a bulk ore and exports the high-value concentrate. During the beneficiation process, a low value waste is created that is currently disposed of on site. The waste does not currently attract the waste levy. Changes touted in the paper suggest that this low value waste would attract the waste levy, making this business model uneconomic. The business would be forced to export the ore without any value add, for beneficiation offshore.

Clearly no regulator would deliberately set out to drive this outcome, as this would be very much contrary to the interests of the State.

Product Benefaction

There is a question the reform process could once and for all clarify, and which would prove beneficial for the State.

It is around industrial processes that take an industrial by-product (a waste) and further refine it to create a useable product, and also create new (but lesser volume of) waste product.

Does this final waste product attract a levy, and if so, does the consequence of the application of the levy mean that the benefaction process is uneconomic and thus abandoned?

Or would the levy be applied to the intermediate product that becomes the process input into the downstream industry?

Is this acceptable and is it in the State interest?

The industrial hub of the WTC, the KIA, is the world's best practice example of industrial symbiosis at work, with close to 150 product and utility exchanges documented and currently occurring. Attached is the diagrammatic representation of this, which is an extract from the 2014 Western Trade Coast Integrated Assessment report.

Some of these are waste beneficiation processes, where application of a waste levy could initiate the discontinuance of the exchange because the process costs render it economically unviable. Application of the waste levy could render these exchanges unviable.

There are situations where there is a waste product that has been created because of a process upset or a special composition order where the buyer is no longer able to take their non-standard product, but where that 'waste' can have a beneficial use.

Consider bio-solids, or off-specification fertiliser for example. These materials have a beneficial use and/or treatment method, meaning they do not end up in a landfill, and they should not attract the waste levy. Perhaps there could be a "beneficial use/ onsite treatment" exemption.

Self-generated Waste

Removing the exemption for organisations that generate and dispose of their own waste will have a significant impact on mineral processing facilities and others that have onsite "waste" storage and landfills. In one Kwinana-based industrial enterprise the impact could literally rise to a \$50m per annum impact. That would be an unconscionable impost and would result in a closure and 'off-shoring' of the operation.

The paper proposes to expand the definition of "received waste" to capture first-party generated waste. There needs to be some caution around this.

There will be an additional financial burden associated with administering the levy that could make it attractive to send all waste offsite to a landfill. Changing existing satisfactory, regulated on-site storage and treatment practices could force more material to local government run landfills, thus increasing the burden on the local governments operating landfills to take increased volumes.

The government has a policy position stating that there will be no new landfills approved within the metropolitan area, and so incentivising the rate of landfilling brings problems associated with this policy position closer. In South Africa material in a stockpile is subject to prescribed inventory management provisions but is not managed as a licenced waste activity until after the elapse of a predefined period, thus facilitating reuse and dramatically diminishing the administrative burden associated with operations that temporarily store material (e.g. land development sites).

There are numerous questions that the reform paper raises. Given that there is a long process of consultative review ahead of us all, with a large burden of additional information required to be provided by Government in relation to its full intention around the waste reform project, it is probably better that the remainder of this submission applies its focus toward raising questions for the DWER to consider.

1. *What is DWER proposing to do to develop the recycling market to encourage diversion from landfill? What incentives might be made available?*

Organisations are already very motivated to find re-use or recycling opportunities. In most cases there are few current practical alternatives.

2. *How will waste be defined?*

The EP Act definition of waste is very broad because it includes matter:

- a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- b) prescribed to be waste.

3. *Will any changes be applied retrospectively, for example to existing inert waste stockpiles?*

Retrospectivity will be perceived as a material risk for industry.

4. *Is a shift from a risk based approach to prescriptive approach likely to be proposed?*

The risk based approach is favored by KIC.

If the current five waste categories within the Environmental Protection Regulations are combined, presumably the highest level of control will be applied to all categories. This doesn't appear commensurate with risk, and is merely applied as an administrative simplicity for the application of the levy rather than for the benefit of an environmental outcome.

5. *Is there the potential to include a "beneficial use" clause thus allowing exemption from levy? (eg. application/treatment of bio-solids, off-specification fertiliser.)*

The levy currently applies to Perth metropolitan area and that the report indicates a likely expansion beyond this region (north and south, east?). This was unnecessarily vague in its description causing concern to Industry regarding the complete scope of the DWER's proposed agenda.

6. *Will the definitions exclude arrangements covered under existing regulations, or is it proposed to capture these?*

It would be considered a material business risk for companies with operations outside of the metropolitan area to be captured under the new definitions, and could lead to unforeseen consequences to those operations. Business' deal with uncertainty by assuming the worst and factoring this into their investment and ongoing operational decision making.

7. *Can it be recognised that if a time limit is applied to stockpiled material, it would be an unreasonable impost on an operation that legitimately needs to store material for 12 months or more before the material is likely to be used?*

Sufficient timeframes need to be imposed to allow for adequate sampling and seeking appropriate treatment/disposal options and eventual budget/contractual agreements for these. 12 months is not sufficient enough time to complete this for all types of wastes (particularly the complex ones).

8. *Can the Department reconsider its proposed approach to the methods for generating weight-based data for reporting purposes?*

Compulsory use of weighbridges is not practicable in all circumstances if they are not conveniently placed. The costs associated with weighbridge construction are high, ranging from \$250 – \$300k for a 36 x 3.5m facility. An alternative is the weightometer approach or current approved estimation methodology.

9. *Can it be recognised that the onsite containment of contaminated soil may be the only feasible disposal option based on cost and sustainability measures?*

General Suggestions

Given the duration of the reform process is going to take place over a couple of years there is time to develop reforms that will take the State closer to achieving its waste recycling goals.

Aspects that seem to need detailed investigation and stakeholder consultation are as follows:

1. Rather than focussing just on the waste levy and other topics covered by the paper, look into the overall waste framework within the State.
2. Consider communication channel development and education. Use the waste levy proceeds to encourage innovation in recycling by providing innovation assistance subsidies.
3. Increase the opportunities for recycling by lifting some of the restrictions that currently restrict recycling.
4. Consider the reform in a much broader and more holistic context.

5. Acknowledge in the regulations, that driving recycling towards the best long term solution is the goal, as opposed to punitive thinking that only serves to achieve the opposite.
6. Take a broader 'reasonableness test' approach to potential reuse possibilities (with the advent of new technology it can become economically viable to rework old tailings produced from old technology to produce new product). How long is 'reasonable' to wait?
7. The stakeholder list currently seems inadequate given the potential impact upon a broad range of stakeholders. The stakeholder list needs to be significantly expanded beyond industry representative bodies to include individual stakeholders.
8. Diligently seek comment from industry to avoid potential future unintended consequences.
9. Gather broad intelligence to inform the reform process via a formally appointed Reference Group.
10. Ensure that a result of the reform process delivers adequate classes of landfill with sufficient volumes available.
11. The current Class Four landfill is currently provided in a monopoly environment, and is often closed. Do we really want to knowingly force industries that generate Class Four waste to stockpile it?
12. The regulations should address lack of landfill availability as a punitive requirement on the landfill operators.
13. Clarify that any recommended changes to landfill classifications do not capture to the use of materials properly applied to land for beneficiation or treatment purposes.
14. Give consideration to a process of waste classification that is able to take into consideration an economic impact assessment of the consequences

KIC thanks DWER for the opportunity to comment on the Waste Reform discussion paper.

Yours sincerely



CHRIS OUGHTON
Director

Attach: Diagram – WTC Integrated Assessment Kwinana Cluster Synergies 2013

