NWRIC
Essential for community Essential for environment

6 September 2019

Environment and Climate Change
Department of Environment, Land, Water and Planning
Level 1, 8 Nicholson Street,
East Melbourne,
Victoria 3002

Dear Malcolm Petrie,

The National Waste Recycling Industry Council (NWRIC) is the national peak body representing waste and recycling businesses. We work to improve waste and recycling services for all Australians.

Our national members[1] and state affiliates[2], service most households and businesses across every State and Territory. The NWRIC's 450 plus members range from small family-owned businesses to multi-billion-dollar global companies. They collectively own and operate nearly every private waste and recycling facility in Australia for collecting, recycling, processing and treating waste.

The NWRIC members work together and cooperatively share a vision for a fair, safe, innovative and sustainable waste and recycling industry. The NWRIC members do this by:

- transforming waste into resources for reuse or energy;
- ensuring the safe handling, disposal and treatment of non-recyclable and hazardous waste; and
- providing a safe and clean environment for the community.

The NWRIC welcomes the opportunity to submit feedback to the Victorian Government on financial assurances for waste and recycling facilities.

Industry's preferred approach to financial assurances

The Victorian EPA list[3] a suite of legal instruments that can act as financial assurances for waste and recycling facilities. These include; bank guarantees, deed polls, accumulated third party trust funds, and insurances.

Industry's preferred model is insurance. This is because bank guarantees and other instruments of this type tie up the working capital of businesses, constraining their capacity to provide new and more sustainable waste and recycling services. A proposed insurance bond scheme developed on behalf of WCRA is attached (appendix A) to this letter as an example.

Feedback from NWRIC members and affiliates indicate that 'risk pooling' is not an appropriate approach, as it violates the principle of a competitive market. That is, companies that have better risk mitigation procedures should be rewarded, rather than pooled with lower performance operators.

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[1] Australia's nine largest waste & recycling companies: Alex Fraser Group (Hanson), Cleanaway, J. J. Richards and Sons, Solo Resource Recovery, Sims Metal Management, Suez, Remondis, ResourceCo and Veolia.

[2] Waste Recycling Industry Association, Queensland (WRIQ), Waste Contractors and Recyclers Association of NSW (WCRA), The Victorian Waste Management Association (VWMA), Waste Recycling Industry Association of South Australia, Waste Recycling Industry Association of Western Australia (WRIWA) and the Waste Recycling Industry Northern Territory, WRINT.

[3] Victorian EPA publication 1595 - Types of financial assurance.

Finally, industry would welcome a nationally consistent approach to financial assurances.

Poorly structured assurances can constrain PIW acceptance
One member has indicated the price of financial assurances can constrain waste acceptance and storage criteria for hazardous waste treatment facilities.

- This is because the waste acceptance criteria and storage capacity of hazardous waste treatment facilities determines the risk profile, and therefore the required financial assurance.

- It is desirable for these facilities to accept the broadest range of hazardous materials possible. However, pursuing this outcome can greatly increase the cost of financial assurances and therefore limit acceptance criteria.

- Explained in another way, hazardous waste treatment facilities may refuse to accept the treatment of certain 'high assurance cost' materials they are capable of treating in order to reduce the burden of financial assurances.

To mitigate this issue, a possible solution is to combine a bank guarantee with insurance that covers some of the risks associated with storing and treating hazardous materials, in order to reduce the overall cost of compliance.

Regular market review to ensure assurances reflect market prices
Another important recommendation is for the Victorian EPA to do a full market review of treatment costs to ensure the 'financial assurance values' assigned to Prescribed Industrial Waste (PIW) types are consistent with the disposal costs offered by industry.

- This will ensure that treatment options are as cost effective as possible.

- A regular review should be conducted to capture price changes when other treatment facilities and options come to market.

The broader regulatory context
The NWRIC understands the Victorian Government is considering reforming financial assurances in order to insure against the risk of abandoned waste stockpiles. There have been three recent prominent examples.

- The abandoned waste tyre stockpile at Stawell in the north west, where approximately one million tyres were illegally stockpiled.
- The stockpile of construction and demolition waste at Lara in Melbourne's south east, which contains 320,000 cubic meters of construction and demolition waste.
- Stockpiles of hazardous chemicals and liquids in Campbellfield and other locations, which could contain more than 10 million litres across multiple sites.

In all of these instances, financial assurances would not have resulted in reduced liability for the Victorian Government as these stockpiles were created by illicit activity and therefore no assurance was in place.

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Further, fires and illegal stockpiles such as these damage the reputation of industry and can substantially increase insurance premiums.

What is required here is not financial assurance but stronger surveillance of illegal activities and proactive steps by regulators to stop them. Our industry is ready to work closely with government to enhance regulatory oversight to prevent further illegal stockpiles, and potentially resultant fires.

Further, the NWRIC believes there is a need for investment in new initiatives to raise operating standards across the industry nationally. This includes GPS tracking of waste movements from generator to final disposal, mass load balance reporting of operators, a review of hazardous waste levies, and greater investment of waste levies into compliance activities on illegal activities.

Alignment of regulatory activities and levies between states to remove inconsistencies and prevent interstate transfer of waste materials. This will make regulation more efficient, keep regulatory costs down and improve standards.

For further information please contact NWRIC Secretary Alex Serpo, (secretariat@nwric.com.au; 0417 932 303), in the first instance.

Yours sincerely,

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APPENDIX A - SAMPLE OUTLINE FOR AN INSURANCE BOND SERVING AS A FINANCIAL ASSURANCE

Below is an outline of an insurance bond scheme which could ensure financial assurance for industry.

Bond Wording

The wording must be in a format which is acceptable to the EPA. In essence the bond undertaking must be:

- Irrevocable,
- Unconditional,
- Pay on Demand (Within 5 days), and
- Without reference to any third party.

In addition, the bond must be underwritten by an APRA licensed insurer who has a minimum Standard & Poors rating of A-.

Application Criteria/Process

Applicants for bonds must demonstrate they have the experience, financial resources and acceptable character to meet their obligations to the EPA under their license agreement.

Applicants would be required to provide the following information before an insurance bond can be issued:

1. Copy of relevant EPA license agreement,
2. Written confirmation the applicant and or its directors has at least 3 years experience in the waste recycling industry,
3. Last 2 years financial statements for the license holder (if the entity is a start up additional information may be required),
4. Up to date management accounts,
5. Statement of assets and liabilities from each Director/Partner,
6. Credit Reference Authority.

An underwriting assessment of the information above would be completed within 5 working days of receipt of the information above.

A copy of the Asset & Liability Statement which includes the Credit Reference Authority is attached under Annexure B.

Collateral/Indemnity

No formal collateral and or any charge over assets would be required. Bond facilities would be provided on an unsecured basis.

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In lieu of security applicants would execute a deed of indemnity in favour of the insurance company.

In the event of a default and a demand on the bond by the EPA the insurance company must automatically pay the EPA the amount demanded up to the face value of the bond.

The deed of indemnity sets out the rights and obligations of both the licensee and the insurance company.

Costs

- Insurance Bond fees would be expressed as a percentage of the bond value and paid annually in advance.
- The annual insurance bond fee proposed is 2.5% of the bond value. For example, a $100,000 bond would cost $2,500 per annum. No GST applies.
- An establishment fee of $300 + GST also applies. This fee offsets the administrative costs in underwriting each application.

Renewal Process

Each licensee must undergo an annual review. The review would focus on the financial performance of the applicant.

To complete the annual review each licensee must provide their most recent externally prepared annual report.

Exclusions

Due to the long term bond requirement of landfill operations (up to 30 years) are excluded.