

## **Submission to the NSW Government Waste Levy Review** **April 2012**

The Australian Landfill Owners Association (ALOA) comprises landfill owners from across Australia. The NSW Chapter of ALOA is pleased to provide this submission on the Review of the Waste and Environment Levy (Levy).

### **Impact on the recycling industry**

1. Examine any evidence presented that the application of the Levy to recycling sectors is impacting on competitiveness or the attainment of maximum economically efficient recycling.
2. Review the effectiveness of the Levy on recycling across different streams (i.e. Municipal Solid Waste, Commercial and Industrial Waste, and Construction and Demolition Waste) and make recommendations for improvement, as necessary.

ALOA believes that any waste Levy should be part of an overall waste strategy and should only be varied as part of a broader strategy review. Any variations to the Levy should be communicated to the industry with at least six months notice.

### **Impact on household waste**

3. Analyse data and evidence presented and provide advice on the impact of the Levy on households and the effectiveness of the Levy in supporting greater resource recovery from household waste.

Households are not directly exposed to the Levy as waste charges are paid through their local council rates. Therefore the Levy has limited impact on the resource recovery actions of households.

### **Funding arrangements**

4. Review and report on the existing funding arrangements available to local councils and industry for waste and resource recovery initiatives, programs, infrastructure and combating illegal dumping.
5. Review and make recommendations on ways to improve the effectiveness of the Levy in supporting investment in and the financial viability of resource recovery infrastructure.
6. Review the effectiveness of the Waste and Sustainability Improvement Program (WaSIP) delivery and identify funding priorities for waste and resource recovery initiatives, programs and infrastructure.

Waste levies should not be utilised to fund landfill infrastructure (in order that early initiators are not disadvantaged). New landfill operators can be given an unfair advantage in the market place thus impacting on existing landfills that have already invested heavily in best technology or practices.

### **Review impact of illegal dumping**

7. Assess any evidence that links the Levy to an increase in illegal dumping in NSW.
8. Assess potential approaches for helping combat illegal dumping, particularly of asbestos waste.

### **Illegal Dumping**

Illegal dumping occurs in many forms, often goes undetected and can occur when waste materials are misclassified under the Waste Classification Guidelines. This has the potential to lead to contamination of the environment and loss of revenue to the government by way of Levy avoidance, ie materials are 'downgraded' to enable reuse through recycling or direct reuse as perhaps ENM. This practice also jeopardises the viability of legitimate landfill operators and recyclers who are unwittingly receiving contaminated wastes that should have been destined to either a higher standard landfill or just to landfill in some circumstances.

It is recommended that a more active role is required by the regulator to better monitor and audit material movement. This would include the licensing of all waste processing and recycling facilities, rather than just landfills.

### **Asbestos Disposal**

The requirements for the covering of asbestos waste needs to be reviewed to enable cost effectiveness and best utilisation of space at the landfill to keep asbestos charges down. This could be achieved by the use of other incoming wastes as alternative asbestos covering materials under controlled circumstances.

The current Levy is likely to be a strong disincentive to dispose of asbestos lawfully. The introduction of a reduced Levy may encourage the lawful disposal of asbestos.

Should a tiered Levy be introduced, the landfill operator should charge the full Levy for all waste received at the time of delivery to the landfill and the waste generator or waste transporter should then seek a Levy rebate from the Office of Environment and Heritage.

### **Other matters**

9. Make other recommendations as appropriate.

### **Levy Reviews/Changes**

As stated above, ALOA believes that any Waste Levy should be part of an overall waste strategy and should only be varied as part of a strategic review with at least six months notice of any variation.

Contractual arrangements for landfills traditionally have long timeframes and customers such as local government require significant notice with regards price movements for budgetary and rating purposes and on this basis the notice for Levy adjustments also needs to be at least six months.

### **Further extension of the Levy area**

ALOA believes that the Levy should be at a fixed rate statewide thus avoiding boundary disputes and the transporting and misrepresentation of waste source at receipt points to avoid or minimise the amount of Levy payable.

This has the potential to increase the carbon footprint of the disposal through transport emissions and defraud the government of Levy.

**NOTE:**

Whilst the majority of ALOA members support this position, some members operating outside the Regulated Areas dissent from this position of ALOA.

### **Levy Payment Timeframes**

ALOA considers that the timeframe for Levy payments should be extended to a 90 day timeline. In the current economic climate it is all but impossible to receive payment in the 58 day timeframe currently in place, even from government agencies. Thus landfill operators are funding Levy payments to the OEHL prior to receiving payment from their customers.

The Levy now represents up to 60-70% of the gate fee thus placing an unreasonable financial burden on landfill operators.

### **Customer Bad Debts**

ALOA considers that Levy deferrals and exemptions should be allowed for genuine proven bad debts. This is consistent with normal Australian company tax law where tax is not paid on income not received and also UK law where waste levy payments are exempted for proven bad debts.

It is suggested that deferral of the Levy payment could be applied for initially upon commencement of legal proceedings against the landfill's defaulting customer and upon finalisation of the proceedings either the Levy could be exempted or an amount paid based on the final payout from the liquidated creditor.

With the Levy now rapidly approaching \$100 (and representing up to 60-70% of landfill revenue) this issue is of major concern to the landfill industry and as such ALOA would be pleased to engage in discussions with the regulator on this issue.

### **Daily Cover**

Imported materials to be utilised for daily cover material currently incur the Levy. ALOA believes that this situation:

- o Places an unreasonable cost burden on landfill operators that do not have suitable onsite materials available,
- o Is a potential driver to discourage best practice procedures for covering waste and meeting environmental performance benchmarks, and
- o Acts to deter the utilisation of alternative cover materials that could replace the use of on site VENM.

### **Operational Materials**

Landfills are required to construct ever-changing infrastructure in the form of access roads and drains and to prohibit the application of a Levy exemption to these materials is unreasonable. The regulator imposes restrictions on issues such as dust and vehicle tracking and without suitably constructed infrastructure, complying with these requirements is difficult.

ALOA believes that a Levy exemption for these materials should be considered based on agreed standards backed by suitably qualified consultant including the requirement for auditing and reporting.

### **Operational Materials and rebate claims determinations appeal or legal remedy mechanism**

The current procedure for Operational Material or rebate claims is to submit a request to the Regulator and await a determination.

This process places no timeline requirement on the regulator to make a determination and has been known to take years for a response.

Additionally the current legislation does not provide any form of 'appeal' mechanism for an operator to contest a determination made by the regulator.

These circumstances leave many determinations open to perhaps a single employee of the regulator who's decision is final and may be an unreasonable assessment but the determination is incontestable by any form of mediation or legal process

ALOA believes as a matter of fairness that there should be a mandated timeframe in which a determination of an application is to be made by the regulator and that there should be some form of mediation or legal process if the determination is disputed by the operator.

With the levy at such a high levels and operating conditions strictly monitored it is considered that in the regulators, operators and community interest that best operating practices are not overshadowed by the requirement to unnecessarily to pay a levy on operational materials used in a landfill to achieve best practice criteria.

### **Carbon Tax**

An initial goal of the NSW Government Waste Levy was to capture the externalities associated with landfill operation including fugitive landfill gas emissions. With the recent introduction of the Clean Energy Legislation (Carbon Tax) by the Federal Government, landfill operators (and ultimately consumers) will be charged twice for the greenhouse gas emissions.

Based on an assumed carbon price in the order of \$10 to \$35, the NSW Waste Levy increases (\$10 per year plus CPI) should be deferred for the next three years, thus easing the burden on households.

The Australian Landfill Owners Association would like to thank the Office of Environment and Heritage for consulting with industry regarding the Review of the Waste and Environment Levy and would be please discuss any of the above issues in detail.

Yours truly

Terry Martin  
Chair, NSW Chapter ALOA