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ACOR
AUSTRALIAN COUNCIL OF RECYCLING

21 April 2017,

Via email:
MRF.Protocol@epa.nsw.gov.au

To whom it may concern,

The Australian Council of Recycling (ACOR) welcomes the opportunity to comment on the consultation draft "*Container Deposit Scheme: Material Recovery Facility Processing Refund Protocol*".

ACOR is the peak national industry association representing a broad range of organisations within the resource recovery industry. We represent a diverse group of members, including local councils, public and private resource recovery and recyclers with different interests in the Material Recovery Facility (MRF) Processing Refund Protocol. This submission reflects a brief consultation with ACOR members and possible areas of concern are specified below.

- **Review of Protocol (s.3):**
  - ACOR supports the 5 year review of the Protocol, which will be reviewed in line with the review of the Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016. It is possible to review number of samples required after a shorter timeframe (e.g. 2 years).

- **Definitions (s.4):**
  - The definition of recycled products should be broadened to align with the regulation and the aims of the Protocol. This will prevent the need to rewrite the Protocol if new products are developed (e.g. new grades of mixed plastics or new reused opportunities for glass).

- There is minimal risk to the scheme in having a wider definition, as each MRF needs to sign a statutory declaration that the offtaker is recycling or reusing the containers, which should be sufficient to provide the EPA with comfort that the material is being diverted from landfill and a lever to punish claimants who make false statements about the destination of the containers.

- **Aim of the protocol (s.6):**
  - Wording in the regulation is “recycling or reuse” which would include glass sand or similar conversion into a different product. This should be reflected in the Protocol.

- **Claim process (s.7):**
  - Favours Scheme Coordinator (SC). E.g. Section 7.6 gives very broad discretion to the scheme coordinator.
  - **S.7.2: Information included with refund claim**: this information may include sensitive commercial data on the MRF operations (e.g. tonnages & recovery rate information, details of customers for recovered products) – need safeguards to prevent this information falling into competitors’ hands, especially if the scheme coordinator has any activity in the MRF/recycling sector.

  - **S.7.5: Processing of refunds**: Sampling costs should be capped very low (0.1c). Another view is that no sampling charge should be borne by MRF operators, irrespective of the counting method, with the full cost of sampling absorbed by the SC out of the saved network fees. If a MRF receives 15,000 tpa at an average of 2000 containers per tonne, 0.1c per container would cover $30,000 per annum in audit costs. It is entirely reasonable for the SC to absorb costs of this magnitude when they are saving several cents of network fees per container. This also encourages the SC to be more efficient with the sampling and reduce the overall cost of the scheme. The EPA should consider multiplying the combined tonnage of all NSW MRFs by 0.1c, which will leave a lot of money for calculating factors. Also in s7.5, there is unfavourable

payment terms, e.g. quarterly invoicing with 45 days for assessment and 10 days for payment. This could be resolved several ways such as monthly invoicing, reduced assessment time, automatic payments based on the previous quarter with a reconciliation following updated sampling results, etc. It is a severe issue if the MRF is expected to incur upfront costs (e.g. paying for sampling and audits) rather than these going to the SC.

- **S.7.7: Appeals & Amendments**: As drafted, it is mandatory for the Scheme Coordinator (SC) to reconsider an assessment, but failure to do anything results in the SC's original decision being upheld. This creates no incentive on the SC to review the claim and simply delays the time until it is pushed into mediation/arbitration, which is yet to be defined. ACOR strongly believes the onus should be reversed requiring the SC to positively act when a MRF raises a dispute with a failure to respond being an acceptance of the MRF's position. To avoid this, the SC simply needs to respond, even if it is to reject the claim.

- **S7.8: Dispute resolution**: the process should be quick and binding on the SC.

- **Method of claim calculation (s.8):**
  - ACOR supports choice of methods/flexibility for operators.
  - The Protocol should clarify that different methods can be used for different products (e.g. direct discount of PET but by weight for aluminium or glass).
  - Method of determining total quantity: weighing every bale to 0.1kg accuracy is not standard practice and will introduce heavy cost to MRF operators with no significant increase in accuracy compared to weighbridge records which are good enough for trade invoicing. Also, landfill levy liability is based on weighbridges calibrated to +/- 20kg. Additionally, some MRFs may ship certain product loose, in which case measuring each bale becomes impossible.

- There is concern whether there will be enough auditors available when the scheme commences to meet the demands of industry and the reporting timescale required by regulations.

- **Eligible container sampling and calculation (s.9):**
  - **S9.1: Material types:** The only way to properly sample glass is at the kerbside prior to entering a collection truck where bottles are crushed and difficult to identify. In addition, the sampling method for glass (as presented by APC in the workshop) may not work at an AWT where the presence of stringy and oversized material may not result in a representative sample falling into the wheelie bins. For similar material audits, the AWT industry practice is to sample with a FEL bucket and then subdivide with a skid-steer loader until the required volumed is achieved.

  - **S.9.2: Sampling requirement:** Agree with the principle of more accuracy for larger facilities. Should be an explicit comment that if a MRF achieves more accurate results, the smaller margin of error is used in further calculations. This way MRFs can undertake a cost benefit analysis and if they opt to increase the sampling rate, the EPA will benefit from additional data collection. Some MRFs may already be conducting audits for another purpose using a suitably qualified auditor – they should be able to extend this to CDS for efficiency – but they may not be able to realise this efficiency if SC is arranging audits. Should specify the maximum number of samples required for the first year to provide certainty over maximum cost – if this gives higher margin of error then this accounted for in the confidence weighting in s9.4.

  - **S9.4: Calculating eligible container factor:** this section should explicitly state that we use the actual margin of error, not the target margin of error from s9.2.

- **Measurement requirements (s.10):**
    - **S10.1: Weighing:** support consistency with standard practice of industry (weighbridge measurements). Reference to laws relating to trade weighing may be better for calibration and accuracy requirements as not all facilities will be following the waste levy guidelines (e.g. regional MRFs)
    - **S10.2: Direct discounting**: support flexibility to adapt as technologies and methodologies for counting evolve. Should not be too prescriptive – include in assurance audits. Potentially providing sensitive data to SC.

- **Reporting & Record keeping requirements (s.11):**
    - ACOR suggests this is coordinated by the EPA and streamlined with existing reporting (if applicable). Duplication of much of the information currently provided to EPA for waste levy and waste tracking requirements. The administrative burden of the scheme should be reduced by including the CDS reporting through Waste and Resource Reporting Portal (WARRP). Most, if not all of the MRFs will already file Waste Contribution Monthly Report (WCMR) which will result in reporting the same material movement twice if the systems are not linked.

- **Assurance (s.12):**
    - If the SC is responsible for managing and paying for sampling and quantity audits, MRF operator responsibility should be limited to providing reasonable access to the sampling team; using the correct factors; and paying the discount for sampling. In this case the discount should be capped to prevent the SC from gold plating the sampling.
    - If the MRF operator is responsible for managing and paying for the sampling and quantity audits, then reasonable to set targets for accuracy but must cap the number of samples at a reasonable level and allow higher margin of error if this number of samples cannot reach the target, at least in the first years of the scheme when the values could be changing rapidly.

- **Other/General:**
    - Some ACOR members suggest that participation in the scheme should not be limited to EPA-licenced facilities: proposes two triggers based on processed material – either more than 15% of the kerbside collected waste received from NSW; or the MRF processes more than 3,000 tonnes/annum of NSW kerbside collected waste (half the licensing threshold). This will capture small, regional MRFs which are below the licencing threshold but avoid large interstate MRFs that might incidentally receive a small volume of NSW materials.
    - Alternatively, other ACOR members believe that in order to ensure the CDS model is monitored with an equal playing field and keep illegitimate or rouge recyclers away, MRF operators should all carry the appropriate EPA licensing or equivalent in other jurisdiction.

ACOR welcomes the opportunity to contribute to the review of the consultation paper and stand ready to advise government following the outcomes of the consultation.

Yours sincerely,

Grant Musgrove
Chief Executive Officer