

Submission on Material Recovery Facility Processing Refund Protocol for Container Deposit Scheme

April 2017

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Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW supports the introduction of a NSW Container Deposit Scheme that provides an incentive refund on return of containers, including those containers remaining in kerbside collection. The NSW Government has sought to design a Container Deposit Scheme (CDS) that complements existing local government kerbside recycling services, rather than replacing them.

The Material Recovery Facility (MRF) Processing Refund Protocol (the Protocol) allows for a MRF to claim container refunds on eligible containers remaining within the kerbside recycling service, without significantly altering current automated sorting and recovery operations.

LGNSW welcomes the opportunity to make comment concerning the Protocol as detailed in the public Consultation Draft document. Due to the limited timeframe allowed for submissions, LGNSW has sought informal and limited feedback from councils' waste staff and Regional Waste Group coordinators to inform this submission.

Opening

Local government is the largest sector assuming responsibility for the collection and recycling of containers identified in the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016* (CDS Act) and associated Regulation. The local government sector is also the largest sector assuming responsibility for litter reduction and prevention programs in NSW. Local government participation through continued kerbside recycling services will be essential for the successful operation of the NSW Container Deposit Scheme. The purpose of the Protocol is to allow for this participation through a refund claim by MRF operators.

LGNSW supports a protocol that can be applied equitably across all NSW MRFs, including those operated directly by, or in joint venture with, councils and in particular smaller scale MRFs. Further, LGNSW supports a Protocol that is fully funded by industry, is transparent and encourages fair dealings between MRF operators and councils. This submission outlines a number of proposed changes to the Protocol to deliver on this position.

Response

The Protocol offers two options for determining the level of Processing Refund value for eligible containers; *Method 1 - Estimating eligible containers using sampling and analysis* and *Method 2 - Direct Counting*. This submission makes comment on both methods where applicable. LGNSW also strongly urges the EPA to establish a simpler regional or MRF averaged method at the earliest opportunity (outlined further below).

Scope of the Protocol

Section 28 of the CDS Act provides for a refund processing Protocol to be prepared. For the purposes of the Act, a 'MRF operator' is defined as:

- (a) *a person who carries on a business that is or includes the processing for reuse or recycling of domestic waste designated for recycling and collected by that or any other person during the course of domestic waste management services and who:*
 - (i) *holds an environment protection licence under the Protection of the Environment Operations Act 1997 authorising the processing of the waste (otherwise than by thermal treatment) at specified premises, or*
 - (ii) *is approved in writing by the EPA as a material recovery facility operator for the purposes of this Part, or*
- (b) *any other person of a class prescribed by the regulations.*

While the Protocol implies that the Processing Refund is generated in respect to eligible containers collected in a local council's area during the course of domestic waste management services (as stated explicitly in the CDS Regulation), this is not clearly stated in the Protocol. LGNSW recommends that the Protocol is amended to make this unambiguous and clear.

Commercial-source recycling and any consequent entitlement to Processing Refunds is not established under the existing CDS Regulation or the Protocol. Any inclusion of such materials would require very clear demarcation and transparency in relation to refund value shared between the MRF and its clients. In addition, an amendment to the CDS Regulation is required to establish how this is to be achieved.

Council/MRF agreements

The CDS Regulation clearly indicates at Clause 18 (2) that this Processing Refund is payable to a MRF only when an agreement (or waiver) is documented between the MRF and council "in respect of containers that have been collected in a local council's area during the course of domestic waste management services".

Councils are seeking that the Protocol provides more detail on how the Processing Refund value is to be shared between MRFs and councils. The Protocol makes it clear that eligible containers received from states other than NSW will need to be addressed as a proportion when claiming a Processing Refund. This same specificity should be provided in regard to the proportioning of Processing Refund value sharing with multiple councils using the same MRF. This principle is even more important when commercial loads of eligible containers are being delivered to the same MRF and included in samples used to establish the Processing Refund value under the Protocol. Guidance on apportioning will also assist in those specific cases where agreements between some councils and a joint MRF are achieved, but other agreements are not made. In the absence of such transparency, councils would rightly be concerned that some of their Processing Refund value may be paid to commercial clients.

In short, the Protocol must outline how the Processing Refund is to be apportioned among multiple customers delivering to a shared MRF, especially mixed local government and commercial customers.

The Protocol specifies how the quantum of that Refund Value is to be obtained, and that sampling costs are specifically to be deducted. It is logical that further provision should be made under the Protocol detailing any other eligible costs that may be deducted from

Processing Refund amounts. This essential inclusion in the Protocol will allow all parties clarity when in negotiations with MRFs.

LGNSW urges that a guidance document for negotiating Processing Refund value sharing agreements is prepared urgently to allow councils to fairly participate in the CDS.

Sampling costs from Processing Refund

The consultation draft stipulates that sampling costs are to be deducted from the Processing Refund available to MRFs and by extension, to councils. However, the rationale for these deductions to be taken out of the Processing Refund has not been established.

As an industry funded scheme, it is the LGNSW position that the sampling costs should be borne by the Scheme Coordinator and by extension the beverage industry. This will provide an incentive to move to a Processing Refund calculation based on averages of containers rather than samples at the earliest opportunity.

Additional “micro” MRF category

The proposed sampling regime underpinning the Protocol allows for three categories of MRFs and sets out their sampling requirements to achieve the 95% confidence level requirement.

- Large facilities: >50,000 tonnes per year
- Medium facilities: 15-50,000 tonnes per year
- Small facilities: <15,000 tonnes per year

The sampling levels do not vary significantly between the existing categories. For example, small and medium facilities (based on information provided by the EPA briefing) will be required to undertake the same minimum sampling regime across all eligible container categories. This minimum sampling requires an audit of eligible containers for each material type (e.g. aluminium, separated or mixed plastics) at the level of 250 kg per quarter, collected using 50 kg sub-samples at the end of the sorting conveyor belt. Subject to cost per individual sample to audit, this sampling can add significant financial burden to smaller MRFs with low or no profitability.

The proposed MRF categories are considered insufficient to allow the sampling responsibilities to be equitably applied across all MRFs, particularly for small MRFs. The very small or “micro” MRF processing 1,000-5,000 tonnes per year will require the same number of samples as a facility processing ten times the volume of recycling. These are often the types of facilities which provide their communities access to recycling and generate local employment. This micro-MRF category is very likely to reside entirely within the local government sector, and be located regionally.

LGNSW is concerned that there may be an expectation that such micro-MRFs would be able to utilise Method 2 – Direct Counting or that they would separately deliver eligible containers to a registered Collection Point (rather than rely on the Protocol). However, the smaller MRFs typically underwritten by local government are often run using social enterprises, and the assisted employment arrangements in these MRFs will not be amenable to the complicated training, safety and sorting processes required to hand sort eligible containers from a recycling line.

In addition, the ability to deliver samples of individual materials is hampered by the small volumes handled at such facilities. A single 50 kg sample of aluminium could contain in excess of 3,200 eligible containers. A very small MRF may require multiple days or weeks of operation to provide a single sample. When five such samples are required per quarter to reach the 250 kg minimum (more than 16,000 aluminium containers), the micro-MRF may be stockpiling most of their throughput in order to provide “samples”.

LGNSW suggests the inclusion in the Protocol of a “very small MRF” category, below 5,000 tonnes per year (<100 tonnes per week). This category should have minimal sampling approaches that are cost-effective and designed for low volumes of individual materials. Given their scale, any errors in the estimate are unlikely to generate large issues overall for the management of the scheme.

LGNSW notes that glass is allowed to be assessed by sampling a cubic metre on delivery of mixed materials to the MRF in order to set the number of eligible containers. A similar volume sample at delivery should be available for micro-MRFs for all material types. Given their low annual throughput, any statistical errors arising for those MRFs in calculating the Processing Refund are likely to be very small when converted into refunds on eligible containers, while adding very little to their operating costs.

Need for increased data transparency

LGNSW strongly advocates for full transparency of sampling data related to the Protocol. Full information will allow councils to enter into agreements with MRF operators in a more fair and equitable manner.

As detailed above, LGNSW holds the position that sampling costs must be passed entirely to the Scheme Coordinator. Should the EPA elect to continue with the cost allocation as set out in the draft Protocol, the requirement at point 7.5 that these costs are to be deducted from the refund claimable by the MRF operator reinforces the need for high transparency to councils as party to the refund agreements.

The final refund value available for Processing Refund agreements will be an amount determined by the level of eligible containers under the protocol, minus the sampling and audit costs. There will therefore be less than \$0.10 per eligible container available for sharing. LGNSW is concerned that in the case where multiple councils and commercial providers share the same MRF, that these costs may be deducted from any Processing Refund value sharing agreements with councils where;

- Council processing refund agreements bear the cost of samples which include material from commercial suppliers to the MRF, and/or
- Multiple councils may be exposed to the same deduction relating to sampling costs in a form of “double-counting”.

The CDS Regulation sets out that the Processing Refund from Scheme Coordinator to MRF is to be paid into a nominated bank account, presumably as a lump sum. LGNSW considers it imperative that the MRF, through a Processing Refund agreement, provides full information, including a value per container for sharing. To ensure that councils can fairly determine their share of Processing Refund value, and to inform the negotiations to establish the agreement for that sharing, the sampling results must also be made fully transparent. This level of detailed disclosure should be specified in the Protocol itself.

Conclusion

The Protocol seeks to establish a basis for redemption of the Processing Refund generated from eligible containers provided by councils to a MRF as part of domestic waste management services. LGNSW urges the EPA to revise the current Protocol in light of the items addressed in this submission. The key revisions considered necessary include:

- That the Protocol is amended to specifically refer only to the Processing Refund generated from eligible containers provided by councils to a MRF as part of domestic waste management services.
- That the sampling costs are borne by the Scheme Coordinator instead of being taken out of the Processing Refund.
- All (other) eligible costs to a MRF that may be taken out of the Processing Refund value are to be clearly listed.
- The mechanism for apportioning Processing Refund value at a MRF with multiple councils/customers delivering eligible containers be outlined in the Protocol.
- A separate sampling method category for very small or “micro”-MRFs of <5,000 tonnes per year throughput, designed to minimise the financial impact of participation in the CDS.
- A requirement for full disclosure of sampling results to councils to inform the sharing of Processing Refunds.