

NSW WASTE POLICY

UNDER REVIEW

On 1 July 2012, the incoming Queensland LNP Government kept its election promise to reduce the cost of living by repealing the Queensland Landfill levy through the amendment of the *Waste Reduction and Recycling Regulation 2011*.

The official reason for its repeal was that the levy was a significant cost imposed on business and industry and repealing the levy helped to meet the government's commitment to reduce the cost of living.

Whilst Queensland landfill owners and waste transporters were rejoicing, the abolition of the landfill levy in Queensland had an undesired and immediate impact on its Southern neighbours.

The abolition of the landfill levy in Queensland and the ever increasing levy in NSW created an arbitrage which made it more commercially worthwhile to transport waste to Queensland and landfill it in that state rather than to engage in resource recovery and dispose of the residual waste in NSW.

The most amazing aspect is not that it occurred at all but that the policy makers were asleep at the wheel and didn't see that it was coming.

The result is of course, that 20 years of NSW EPA policy to encourage resource recovery and discourage landfilling has been comprehensively undermined and the Sydney recycling industry all but destroyed.

When challenged, some industry players disingenuously claim that they transported waste for the purpose of recycling it interstate. We all know the value of those claims. There is not enough profit to be gained from the sale of recycled materials in NSW [much less Queensland] to justify the additional cost of interstate transportation to the processing cost of recycled material.

In November 2012, just four months after the repeal of the Queensland Levy, when the then policy makers were just dozing off, Ian Malouf Managing Director of DADI gave them a wake-up call.

He wrote to the then Minister for the Environment, the Hon. Robyn Parker and the Minister for Finance, the Hon. Gregory Pearce predicting effects for the years to come.

"Dear Ministers, we are facing something of a crisis in our waste disposal industry at present and we predict that if it is not addressed this will have an unforeseen and adverse effect on NSW Government revenues in the forthcoming year"

"We estimate that revenue of the order of \$100 million per annum is potentially being lost in NSW to the Government and without action this can potentially grow to \$200 million per annum very quickly".

Chair and CEO of the EPA, Barry Buffier replied on the Minister's behalf saying that there was to be an independent review into the operation of the waste levy and, said,

"Should this initial analysis indicate that the interstate transport of waste is a significant issue, the EPA will be working with our Queensland counterparts and industry to develop a workable solution that delivers the best resource recovery and environmental outcomes".

Only five years have passed and a "workable solution" has yet to be delivered.

That's not to say that the EPA hasn't *tried* to address the issue but the regulator's instinctive response to a problem is to use the power of government to legislate or regulate the problem away. It has taken 5 years for the NSW EPA to learn that in an environment where the Commonwealth Constitution bars you from doing precisely that, the alternative choices are limited.

WHAT VALUE IS GREENSTAR?

Greenstar Certification, as we all appreciate is undoubtedly a "feel good" program which allowed builders and developers to wrap themselves in the Nanna blanket of being responsible corporate citizens.

But Greenstar was nevertheless only a valuable tool in a commercial environment where recycling and resource recovery was encouraged by State policy where interstate movement and landfilling of waste did not exist and counterfeiting of receipt documentation was virtually unknown.

Did you notice that we said Greenstar was a valuable tool? Past tense.

What is cruelly evident is that circumstances have changed and policy once again has not kept up with those changed circumstances.

The cosy reassuring Nanna blanket has become transformed by policy and circumstances to become the rug used to cover a multitude of sins.

Recent evidence of counterfeiting must surely mean that some waste transporters are misleading their clients as to the proper or actual destinations of asbestos containing materials (ACM). Perhaps ACM has been sent interstate, perhaps it is still in Sydney. Who would know? A rhetorical question not directed to the NSW EPA.

For other construction and demolition (C&D) wastes which could be recycled but instead are now being sent interstate, the plain fact is that we know that there is not enough money to be earned from the sale of recycled/recovered products to cover the overheads of the processing and interstate transportation. It logically follows therefore that C&D waste is *not being transported for the purposes of recycling*. The default position is that waste is transported for one purpose only and that is for landfilling.

WHAT DOES THIS MEAN FOR THE FUTURE OF PROGRAMS SUCH AS GREENSTAR?

It logically follows from what we have written above that if some erstwhile genuine recyclers are both issuing favourable Greenstar reports and transporting large quantities of waste to Queensland then there is a serious problem. To do both of these things at once is plainly to perpetrate a fraud upon the Greenstar system.

Developers and builders whether private or Government would be well advised to take direct steps to validate the information they are given. Reliance upon a Greenstar report without such validation may in the long term prove to be more trouble than it was worth in the first place. Almost certainly it may prove more expensive than first thought and potentially could also result in a hitherto unforeseen civil liability.

It has been reported in the last few days that after the Grenfell tragedy in the UK, Australian Banks lending money to fund large developments are now themselves investigating in some detail the flammability and safety of materials proposed to be used.

What are the Bank's positions likely to be if they consider that asbestos laden products might potentially be used either in the building itself or in the surrounding gardens and landscaping. Can there be any more effective way to destroy the recycling industry than to undermine and ultimately destroy the integrity of programs such as Greenstar?

Responses by the NSW EPA have been both confused and ineffectual.

First the Proximity principle, the amended Proximity principle, the Proximity principle no longer to be enforced.

All of these followed by a Consultation paper promoting draft regulations relating to the management of C&D waste. There were holes in it big enough to drive a truck through.

Litigation against the Victorian regulator which had purported to regulate for interstate trade in waste, collapsed and for the very same reasons as had occurred in NSW against a well known player.

It might be practicable [as has been recently suggested] to make transfer stations liable to collect levy but that surely won't prevent waste bypassing transfer stations altogether in order to avoid that levy liability.

One – so called "easy" solution which has been suggested would be for the Queensland State Government to re-impose its landfill levy, or for the NSW State Government to reduce its rate of tax.

The former is unlikely to happen in the short term due to election commitments given in that state and the latter runs counter to the longstanding NSW policy of discouraging landfilling and encouraging resource recovery.

Another solution which has also been recently canvassed is for a so-called homogenisation of environmental regulation including landfill levies. Unless the State Governments refer their environment powers to the Commonwealth [unlikely] or the Commonwealth Government imposes a standard rate of tax [excise?] across landfilling in all states [even more unlikely] or Queensland quickly reinstates a modest landfill levy, the issue looks set to smoulder on.

And, [if there weren't enough suggestions already] yet another suggestion to hit the traps is that plan of using mutual recognition legislation where one state *could* [in effect] collect another state's tax on the first state's behalf and remit it to the first state.

FOUR CORNERS REPORTS

On Monday August 7th a joint Four Corners/Fairfax Media Investigation claimed to uncover "the dirty truth about your rubbish".

What that program revealed was *not* news to stakeholders and it was not news to the Queensland Premier who claimed she was "horrified" to hear the extent of illegal dumping of waste from NSW to Queensland.

Despite the ABC's dramatic flair in reporting, transportation of waste between the States is not illegal. Interstate trade generally is protected from discriminatory regulations or imposts under s92 of the Australian Constitution.

The NSW Environment Protection Authority (EPA) recently gave evidence to the Parliamentary Inquiry into the NSW Waste Industry to the effect that in the past financial year 670,000 tonnes of waste has been transported from NSW to Queensland. How much has actually gone there? The industry view reckons that the figure is closer to 1 million tonnes in one year.

We all know of course that transporting NSW waste interstate, negatively impacts NSW and Australia by increasing greenhouse gas emissions, fuel usage and enhancing the risk of road accidents and of pollution by landfilling. Road infrastructure is also placed under increased and unnecessary stress.

We also know that the interstate transportation of waste has cost jobs in the NSW waste recycling industry and significantly impacted Government revenue available from the s88 waste levy. This is revenue which historically, has been directed towards waste minimisation programs and assisting NSW Councils.

There is a bigger concern of course which until recently had not so far been openly acknowledged.

That issue, potentially the most dangerous of all, is the consequence of the abject failure of the NSW Waste Tracking system.

DADI Group can't be the only stakeholder in the waste industry to experience the recent and growing phenomenon of fraud from the

DADI calls for boycott – cover of brochure

counterfeiting of its records the clear aim of which can only be directed to one purpose, which is to be able to show the fraud dockets and receipts as evidence of a supposed landfill destination for particular waste.

Hands up anyone who thinks it's time for the NSW EPA to spend less of its energy and resources on technical breaches with no significant environmental harm at licensed premises than on sorting out the big and the really important issues.

If asbestos contaminated material is "reborn" by mixing it with virgin soils for use in landscaping or is allowed to be buried in situ by government agencies instead of being properly landfilled then the human health damage which the community has faced over the last thirty years could potentially go on for many many more decades with an ever widening circle of victims.

It's well overdue for the regulators to get tough on both those who would by counterfeit and fraud deliberately recirculate asbestos contaminated materials within our community and also those who allow the importation of similarly contaminated building materials from China or other places.

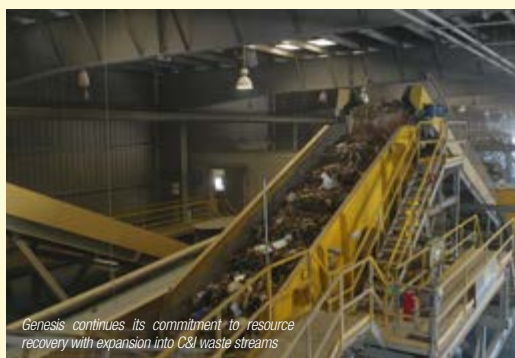
In an email dated 10 July 2014 Ian Malouf expressed his concern to EPA Director of Waste and Resource Recovery Steve Beaman,

"This Queensland thing is shredding our industry and it is getting dramatically worse each day. Waste containing asbestos and contaminated other waste is being back loaded with grain in the same vehicles bodies just for an example".

This is a clear and present danger to the health of the community and it should be faced up to now.



Dial A Dump Industries Group has continued to achieve 80% resource recovery while others have transported interstate for landfilling.



Genesis continues its commitment to resource recovery with expansion into C&D waste streams

Quite apart from the logistical difficulties involved, one might have thought that the question of the extra territorial effect of state legislation would be called into question. In effect an Australian state [not a sovereign national entity] legislating an entitlement to impose a tax resulting from an activity carried out beyond its borders and a tax collected on its behalf by another state. Anything more calculated to enliven either s90 or s92 of the Commonwealth Constitution is hard to imagine.

So we see that the theoretical policy alternatives for regulators are many, the real solutions which must overcome the constitutional difficulties are few, the consequences of inaction enormous.

In January 2017 Dial A Dump Industries produced a Black letter law solution – easily implemented, constitutionally sound and a solution for NSW that does not rely on the state government of Queensland.

The existing s88 Levy would be recast as a Waste Responsibility Levy [WRL] and would, [unlike the current levy] be legally imposed primarily on the generator or originator of the waste. The collection point would remain as it is now, at the Landfill weighbridge.

The WRL would then create economic incentives and legal imperatives on the person who originally generated the waste to ensure it is disposed of properly including recovering and recycling the useful and valuable components. Waste generators would not simply be able to wash their hands of responsibility.

The EPA has been in possession of the methodology for more than six months and the Barrister's advice in relation to it has been supplied to the Government. Not one person from the Government or the EPA has made any contact with us in relation to it. Surely that must indicate that no-one is seriously addressing the problem?

DADI Group says, bite the bullet amend the s88 levy in the way suggested and do it Now!

WHERE IS THE FUTURE?

Even if we are able to resolve the interstate waste transportation arbitrage being exploited by operators that will only get us back to where we were 5 years ago. We will only have solved part of the problem.

There is still asbestos not being adequately tracked and the current levy rate in NSW a clear disincentive to landfill it. That is a contradiction which must also be solved.

We understand that the simplistic notion of reducing or abolishing the levy entirely on ACM would not work and would be likely to encourage the deliberate contamination of wastes and soils to avail of a reduced or nil levy rate.

The NSW EPA has "draft" policy guidelines for the management of Asbestos Containing Material [ACM] but in practice is wholly unrealistic and inconsistent about how ACM can be managed. Maintaining an inflexible standard response that 6 pieces of asbestos sheet found on the surface of a hill contaminates the entire hill is frankly ridiculous and especially so when set against the current failings both of tracking and of interstate transport.

Lets summarize, a "draft" policy, inconsistently applied, inadequate waste tracking of ACM, uncontrolled transportation of waste across state borders, counterfeiting of documents and a levy rate which acts as a disincentive to landfill ACM.

Is there really any wonder that the system is broken? For goodness sake it's not rocket science to solve these problems, we say just sit down with some rocket scientists and come up with a solution.

ENERGY FROM WASTE

Even if a miracle occurred and the interstate issue was fixed and NSW recycling policy restored and recycling to the max occurred there would still also be a large amount of residual waste that can at present only be directed to landfill. There is no real dispute that the Sydney metropolitan area is running short on landfills.

The NSW Energy from Waste Policy provides part of the answer, recognising as it does that as long as we consume, we produce waste.

By unlocking energy from residual combustible materials that would otherwise end up in the ground addresses the landfill shortage and we can also significantly abate Australia's greenhouse gas emissions generated by landfill.

We believe that an Energy from Waste proposal can be a valuable solution to Sydney's growing problem of waste disposal and diminishing landfill

capacity. The technology uses as its fuel the residue building and demolition wastes left over after the recycling process to generate electricity.

Energy from Waste provides:

- Cheaper electricity
- Additional baseload power generation form a 60% renewable source
- Safe alternative to landfilling
- Reduction in greenhouse gas emissions
- Cleaner alternative than burning coal for electricity generation
- Job creation and it's safe

These types of facilities have been proven to be a safe and efficient way to generate power and are often located in urban areas alongside homes, schools and offices.

There are now over 2,200 Energy from Waste facilities operating in 35 countries across the world. Marc Stammbach, Managing Director of Hitachi Zosen Inova which has built more than 500 thermal energy waste to energy plants worldwide recently told the Parliamentary Upper House Inquiry

"Our technologies operate every day – safe, reliably, environmentally compliant and energy efficient".



The proposed facility at Eastern Creek will use proven thermal technology to process the waste in a safe and efficient manner, while generating enough power for 100,000 homes a year.

In Europe and the UK the facilities had all passed rigorous approval processes and, for many years have been producing clean, cheap energy with less harm to the environment, compared with coal fired stations or by dumping waste into landfill.



Sophisticated filters and scrubbers ensure that the power generation process is completely safe and pollution free (Image courtesy of Hitachi Zosen Inova)



Superheated steam drives turbines to generate power to the grid for the equivalent of all homes in BLACKTOWN City area (Image courtesy of Hitachi Zosen Inova)

We believe that Energy from Waste is an integral part of the solution for future sustainable waste management in Australia. The EFW solution will mean more cheap and reliable electricity and avoid the need for large – and long scale transportation of waste.

Here in New South Wales whether it is an airport, or a motorway there is always the inevitable tension between the need for infrastructure, the desire for convenience and development and those who say, ok yes... but not in my backyard.

By and large people are creatures of habit and of convenience. They are used to their surrounds and any developments which affect that in any measure are, as a matter of human nature, likely to be instinctively opposed.

The need for vital infrastructure must therefore mean something more than the narrow and focussed opinion of those people who will live in close proximity to a particular development. If it did not, then all of the motorway developments currently going on around Sydney and all of the light rail and infrastructure developments through the centre of Sydney would have to cease for the same reason. The minority of people whose homes and businesses are nearby would argue that there is no need for these developments whilst the wider community thinks otherwise.

This year, DADI Group commissioned the carrying out of an independent poll of the community the results of which were quite interesting.

Of the 1,200 people surveyed, 69% of the general public in NSW supported the proposed Energy from Waste facility at the Eastern Creek industrial estate with 32% supporting it strongly.

65% of people within the 20km vicinity of the site support the project, with 27% of them supporting it strongly.

The survey highlighted that the most important issues for people in Sydney and NSW are:

- 36% Transport and Infrastructure
- 15% Cost of Living
- 10% Local issues within communities
- 8% Health & Care

In relation to prompted issues,

(i) for those outside the 20km vicinity of the site the most important issues are:

1. creating jobs (+87)
2. cost of living (+86)
3. the need to reduce waste (+85); and
4. lowering the cost of energy (+84).

(ii) for those inside the 20km vicinity of the site the most important issues are,

1. the lowering of cost of energy (+90)
2. cost of living (+86); and
3. creating jobs (+85).

The survey indicates there is low awareness among the general public in NSW of the shortage of landfill sites (+35).

92% agreed with the statement that **we need to do more to recycle waste and reduce harmful greenhouse gases.**

90% agreed with the statement that **we need to develop more ways of creating energy to bring energy prices down.**

83% agreed with the statement that **using waste we can recycle as fuel to generate electricity is a smart way to reduce greenhouse gas and stabilise power supplies.**

Of people who support the Energy from Waste facility proposed at Eastern Creek:

- 49.5% said they support the project because **it is good way to remove waste while creating power;** and
- 21% said they support the project because **it reduces climate change, emissions and pollution.**

Only 15% of people within the 20km vicinity and 5% of people outside the 20 kilometre vicinity expressed opposition to the proposed facility.

Of people who are opposed to the Energy from Waste facility proposed at Eastern Creek:

- 26% said they oppose the project because **it is too close to the residential areas;** and
- 21% said they oppose the project because **it reduces air quality in the local area.**

Residents in **all other Regions** support the proposed facility including residents in Mt Druitt, Rooty Hill, Doonside and Blacktown (including suburbs to the east such as Wetherill Park, Pemulwuy and Bossley Park) where support is 52%.

The vast majority of the general public say this issue will not affect their vote for a political candidate.

For those whose vote it will affect, most say they are more likely to vote for a candidate that supports the facility, than vote against them.

Notably, those within 20km vicinity of the site are 16% more likely to vote for a political candidate who supports the facility than vote against them.

Clearly the majority are in favour of Energy from Waste.

The current Upper House Parliamentary Inquiry into the Waste Industry was initiated based upon political advantage and a deliberate obfuscation of the science.

Theatrics aside, we think that the Inquiry has been very useful in shining a light into the dark corners of the Industry and presenting an opportunity to review and recommend adjusted policy settings.

The Inquiry bears a heavy burden of responsibility to take advantage of a once in a generation review of these issues and we hope that we will not be disappointed.



Dial A Dump is a principal provider of waste collections and waste management services in New South Wales.



Dial A Product is the producer and supplier of a vast range of quality recycled products at our Genesis recycling facility in Eastern Creek, including wood chip and road base.



Genesis Xero Waste is the market leading provider of waste transfer, landfill and recycling services for industry.



The Next Generation is leading the way for Energy from Waste technology in Australia.