

Environment Protection (Waste to Resources) Policy 2010: Guidelines on the assessment of resource recovery facilities

Issued May 2012

EPA976/12: The Environment Protection Authority will assess applications for approvals under clauses 11(6) or 12(6) of the Environment Protection (Waste to Resources) Policy 2010 taking into account the matters set out in this document.

Purpose

This document provides guidance to the waste and resource recovery industry and other activities undertaking resource recovery on when approval is required under clause 11 of the Environment Protection (Waste to Resources) Policy 2010. It sets out the key requirements that will be taken into account by the EPA when determining whether an approval is to be issued. Compliance with clause 11 is necessary to dispose of certain wastes to landfill.

1 Introduction

The Environment Protection (Waste to Resources) Policy (the EPP) was created under the *Environment Protection Act 1993* (the Act) and came into effect on 1 September 2010.

The objective of the EPP is 'to achieve sustainable waste management by applying the waste management hierarchy consistently with the principles of ecologically sustainable development set out in section 10 of the Act'¹. It seeks to support *South Australia's Strategic Plan 2011* target of reducing waste to landfill by 35% by 2020 and the objectives of *South Australia's Waste Strategy 2011–2015*.

From 1 September 2012, a person must not dispose of waste² produced in metropolitan Adelaide to a landfill depot unless the waste results from, or has been subject to, resource recovery processes carried out—

- a at an appropriate licensed material recovery facility or composting depot; or
- b at some other facility that has been approved by the Authority; or
- c in accordance with the waste management hierarchy and to the extent reasonably achievable³.

The EPA can grant approvals for resource recovery facilities and attach (and vary) conditions to such approvals⁴. Wastes from such approved facilities (as well as appropriate licensed material recovery facilities or composting depots) can be disposed of directly to landfill without further assessment.

¹ EPP clause 7.

² Wastes excluded from the need to be treated are set out in EPP Schedule 3.

³ EPP clause 11(3).

Appendix 1 provides the full text of clause 11 of the EPP.

This document sets out:

- whether a facility approval is needed under clause 11 for the facility to be able to receive waste and then send it to landfill following treatment, and
- the key requirements that will be taken into account by the EPA when determining whether to issue an approval for a facility under clause 11.

2 Activities which can dispose of wastes regulated by clause 11 to landfill without needing an approval

2.1 Appropriate licensed material recovery facilities

A material recovery facility that holds a licence under the Act is able to receive the types of wastes permitted under its licence⁵. No other approval is required to send those wastes from a material recovery facility to landfill.

The EPP defines material recovery facilities as well as what constitute transfer stations, landfill depots and composting depots. It defines a material recovery facility as 'a depot for the treatment of waste for resource recovery, other than a composting depot'⁶.

The EPP states 'resource recovery in relation to waste, means—

- a reusing the waste; or
- b recycling the waste; or
- c recovering energy or other resources from the waste'⁷.

The EPP specifies that the treatment of waste is a reference to the treatment of waste in some way—

- a 'to recover material from the waste that may be reused or recycled; or
- b to recover energy or other resources from the waste; or
- c to prepare the waste for further treatment to recover material from the waste that may be reused or recycled or to recover energy or other resources from the waste,

and includes, but is not limited to, sorting, shredding, crushing, compacting or packaging the waste'⁸.

In summary, **a material recovery facility is a depot where the essential character of the facility is for the treatment of waste for resource recovery** rather than a place where some waste may be recovered but it is not its key purpose. Whether or not a facility constitutes a material recovery facility will be a matter of fact and degree depending upon the nature of activity undertaken. The definition is based on the treatment, not handling processes and it will cover depots that are for the treatment of permitted wastes for resource recovery whether they are strongly mechanised or predominantly manual in character. A material recovery facility may be co-located with other waste activities.

The scope of the definition of a material recovery facility in the EPP is such that it will cover:

- licensed depots that are designed to mechanically separate materials received specifically for recycling or manufacture into recovered products (ie the facilities typically referred to as material recovery facilities or MRFs),

⁴ EPP clause 11(6)–(7).

⁵ EPP clause 11(3)(a).

⁶ EPP clause 3(1).

⁷ EPP clause 3(1).

⁸ EPP clause 3(2).

- licensed depots where the key purpose is the separation of materials specifically for recycling or manufacture into recovered products without strong reliance on mechanisation. This includes waste recovery facilities where the site provisions and staff direction results in all glass, metals, concrete, bricks, plastics, vegetative matter, electronic wastes (including whitegoods), tyres, fluorescent lighting, and cardboard and paper entering the site being treated for resource recovery. Depots that receive some waste streams regulated by clause 11 that are not subject to thorough separation (eg most transfer stations) do not meet the essential character requirement for being a material recovery facility,
- licensed depots that primarily reuse waste or prepare waste for reuse,
- licensed depots that primarily recycle of materials or prepare waste for recycling, and
- licensed depots where the sole or key purpose is the manufacture of products from waste materials.

2.2 Appropriate licensed composting depots

A composting depot that holds a licence under the Act is able to receive the types of wastes permitted under its licence⁹. No other approval is required to send those wastes from a composting depot to landfill.

The EPP defines a composting depot as 'a depot for the treatment of organic waste for the production of compost, and includes a composting works as described in clause 6(3) of Schedule 1 Part A of the Act'¹⁰.

Activities licensed under clause 6(3) of Schedule 1 Part A of the Act meet the requirements of clause 11 for the wastes that they are authorised to receive.

2.3 Activities satisfying clause 11(3)(c) of the EPP

Waste that results from, or has been subject to, resource recovery processes carried out in accordance with the waste management hierarchy and to the extent reasonably achievable may be disposed of to a landfill depot¹¹. An activity may satisfy this option under the EPP without holding any approval.

The 'waste management hierarchy' in the EPP has the same meaning as in the *Zero Waste SA Act 2004*. The Zero Waste Act states:

the waste management hierarchy is a reference to an order of priority for the management of waste in which—

- avoidance of the production of waste; and
- minimisation of the production of waste; and
- reuse of waste; and
- recycling of waste; and
- recovery of energy and other resources from waste; and
- treatment of waste to reduce potentially degrading impacts; and
- disposal of waste in an environmentally sound manner,

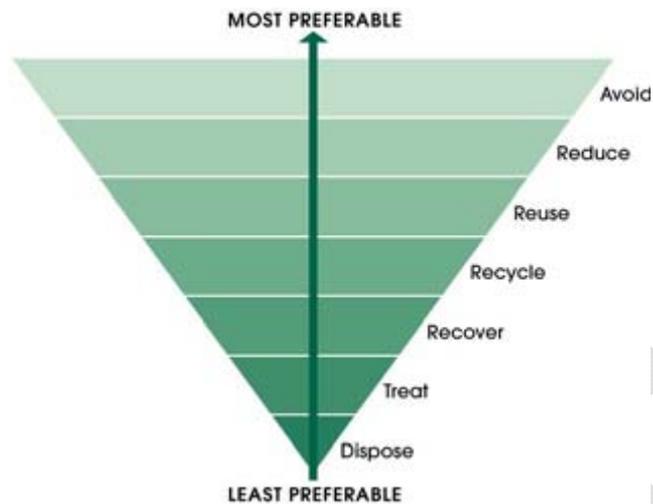
are pursued in order with, first, avoidance of the production of waste, and second, to the extent that avoidance is not reasonably practicable, minimisation of the production of waste, and third, to the extent that minimisation is not reasonably practicable, reuse of waste, and so on.

⁹ EPP clause 11(3)(a).

¹⁰ EPP clause 3(1).

¹¹ EPP clause 11(3)(c).

In visual summary:



The definition of waste under the Act is sufficiently broad that it can relate to activities that are not typically considered as being waste or recycling depots or that do not require licensing.

Under the Act, 'waste' is defined as—

- a any discarded, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the matter; or
- b anything declared by regulation...or by an environment protection policy to be waste,
- c whether of value or not¹².

Waste handling activities are very diverse ranging from activities licensed as waste or recovery depots under Schedule 1 clause 3(3) through to minimisation and separation of wastes by waste generators, soil reuse between development sites to the transfer of secondhand goods in need of repair.

Resource recovery activities may be undertaken by different types of facilities with different environmental risk profiles—which may or may not be licensed. Activities that undertake resource recovery in accordance with the waste management hierarchy and to the extent reasonably achievable beyond licensed material recovery facilities and composting depots may include:

- waste or recovery facilities that do not comprise an appropriate licensed material recovery facility or compost depot, eg transfer stations, skip bin facilities, tyre recyclers and container deposit legislation (CDL) depots,
- soil reuse between development sites, or
- non-waste businesses or educational institutions that generate high volumes of waste, undertake source separation of wastes and determine that there is a commercial or other benefit to being able to dispose of their residual waste to landfill without it undergoing any further resource recovery treatment. These businesses may or may not be licensed under the Act. For example,
 - a large (licensed) car manufacturing business that separates more than a dozen waste streams that it generates on-site. These wastes are then variously sent off for resource recovery or chemical treatment, leaving a residual waste stream with no or very few recoverable elements
 - a hotel chain (unlicensed) that undertakes source separation of many waste streams at its hotel(s) but still has a mixed residual waste stream that presents little opportunity for additional recovery of materials

¹² Section 3(1) of the Act. Clause 4 of the EPP provides for when a 'waste' will cease to be a waste. Its scope is such that beyond materials governed by existing specifications, it demonstrates that materials such as secondhand clothing ready for sale will not be waste.

- a building company that undertakes consistent waste source separation practices for all wastes at all of its development sites, leaving a residual waste stream with no or very few recoverable elements.

A notable aspect of EPP clause 11(3)(c) is that it caters for waste handling activities that do not constitute a depot so that it can readily relate to waste generation and reuse activities.

Waste generators may pursue processes to undertake resource recovery of as much waste as reasonably possible through source separation activities (as well as having opportunities to avoid or reduce the generation of waste).

For waste or recycling depots, the highest order options available for wastes received at the depot are reuse and recycling so that many will already be captured within the scope of a 'licensed material recovery facility' as described earlier.

3 Do you need to seek a clause 11 approval?

Waste management activities vary from disposal only through a mix of activities to resource recovery only. Accordingly, approvals under clause 11 have been provided for in the EPP to enable any facility and its stakeholders to avoid any doubt about the facility's ability to dispose of its wastes directly to landfill¹³.

A clause 11 approval should be sought if waste regulated by clause 11 is being handled and:

- 1 the facility does not clearly satisfy clause 11(3)(a) [ie licensed material recovery facility or composting depot authorised to receive that type of waste] and the facility wants certainty regarding its ability to dispose of its waste directly to landfill (eg transfer stations and skip bin facilities), or
- 2 for facilities that do not meet clause 11(3)(a), there is a commercial or other advantage arising from holding an approval due to a landfill depot operator then not needing to establish that clause 11(3)(c) has been met or make any determinations about banned wastes¹⁴.

An activity that is disposing of its waste to another activity that satisfies clause 11 does not need to hold an approval (eg a skip bin operation may take its waste to a licensed material recovery facility or to a transfer station that holds a clause 11 approval).

4 Assessing clause 11 approvals for waste or resource recovery activities

4.1 How will the EPA assess whether waste is being handled appropriately?

The types of wastes received and how they are handled varies across the facilities servicing metropolitan Adelaide. Given this individuality and a lack of information available to the EPA on the movement of materials within facilities, it has not been possible to nominate specific processing actions that need to be undertaken uniformly¹⁵.

Initial considerations by the EPA will draw from what waste materials are being received by the facility and what recovery endeavours for certain materials is occurring. Improvements in performance over time may be sought through resource recovery processing requirements, any relevant licence conditions and the EPA guidelines established for clause 11(8) of the EPP.

¹³ EPP clauses 11(3), (6)–(7).

¹⁴ For the landfill to meet its obligations under EPP clauses 11(4) and 12(4)–(5).

¹⁵ Rawtec & Mike Haywood–Sustainable Resource Solutions, *Analysis of resource recovery activities servicing Metropolitan Adelaide* (December 2011), pg 2.

4.2 How will the EPA assess approval requests for transfer stations (including skip bin facilities)?

Under the EPP, a *transfer station* is defined as ‘a depot for the reception and aggregation of waste streams prior to their transport to some other depot or place for further sorting, resource recovery or disposal’.

Transfer stations can have varied recovery rates depending upon the types of waste received (eg high-volume mixed wastes through to skip bins, small commercial loads and the residential trailer market) and the particular constraints at the relevant site. The high-volume transfer stations servicing metropolitan Adelaide have been reported as being likely to be recovering around 5–15% by weight of total waste materials. At facilities promoting pre-sorting of wastes by clients together with some additional treatment of tipped residual wastes, the recovery rates have been estimated as in the order of up to 50–70%¹⁶.

The EPA will approve transfer stations (including skip bin facilities) under clause 11 of the EPP provided that:

- 1 the depot undertakes or will, upon commencement, undertake resource recovery processes for metals, aggregated cardboard and paper, aggregated vegetative matter, aggregated bricks and concrete, and timber suitable for recovery to the extent that is reasonably practicable at that depot (except where any particular material is not received by the depot).
- 2 the depot must establish and maintain dedicated temporary storage areas for at least each of the following retrieved materials (unless such materials are not received at the site):
 - hazardous wastes, lead acid batteries, oils, whole tyres, gas bottles,
 - aggregated cardboard and paper, aggregated vegetative matter, metals,
 - bricks, concrete, timber suitable for recovery, and
 - whitegoods, computers and televisions, other electronic wastes, and fluorescent lighting.

Resource recovery at an approved depot will also need to comply with any relevant licence conditions and the EPA guidelines established for clause 11(8) of the EPP. The handling of banned wastes will need to comply with the EPA guidelines established for clause 12(4) of the EPP.

The depot’s application should describe the nature and extent of resource recovery processing being undertaken. The treatment of the waste may involve mobile equipment use (eg excavators) for the retrieval of these recoverable materials or direction of customers and staff to dedicated areas for depositing these materials. No percentage level of recovery is required for an approval at this time.

4.3 How will the EPA assess approval requests for other waste or recycling depots?

Research done for the EPA and ZWSA indicates that other waste or recycling depot types (eg recycling operations and manufacturers of recycled products) have high recovery levels and, for many, business success usually depends upon attaining controlled waste inputs and the production of marketable products¹⁷.

Many of these waste or recycling depots can be expected to be ‘appropriate licensed material facilities’. However, where they are not or the certainty of an approval is sought, assessment will be undertaken in accordance with the boxed text.

¹⁶ Rawtec & Mike Haywood–Sustainable Resource Solutions, pp 30–31.

¹⁷ Rawtec & Mike Haywood–Sustainable Resource Solutions, section 3.

The EPA will approve current depots that exist essentially for the treatment of waste for resource recovery under clause 11 of the EPP.

Resource recovery at an approved depot will need to comply with any relevant licence conditions and the EPA guidelines established for clause 11(8) of the EPP. The handling of banned wastes will need to comply with the EPA guidelines established for clause 12(4).

In determining whether or not to grant a clause 11 approval to proposed new waste or recycling depots, the EPA will consider:

- which level of the waste management hierarchy the proposed activity relates, and
- the location and nature of other depots, including the availability of any cost-competitive and accessible alternative depots (either existing or proposed with all relevant planning and environmental approvals obtained at the date of application by the proposed activity) for management of that waste type that are identified as preferable under the waste management hierarchy.

4.4 How will the EPA assess approval requests for activities co-located with a landfill depot?

Under the EPP, a landfill depot is defined as 'a depot for the controlled disposal of waste to land'. A site may have a co-located landfill depot and transfer station, materials recovery facility or composting depot.

Landfill operators with co-located facilities need to be able to demonstrate compliance with clause 11(4). The resource recovery element of the site will need to comply with these guidelines, any relevant licence conditions and the EPA guidelines established for clause 11(8) of the EPP. The handling of banned wastes will need to comply with the EPA guidelines established for clause 12(4) of the EPP.

Landfill depots may have gas capture for the generation of electricity from mixed waste at landfill. This electricity generation will not be able to constitute a resource recovery facility—such waste has already been subject to disposal to landfill and any wastes regulated under clause 11 will still need to have first been received from, or subjected to, resource recovery processes.

5 Assessing clause 11 approvals for other activities

Other waste handling activities that may satisfy clause 11(3)(c) of the EPP are diverse¹⁸. It is therefore not possible to specify all the different scenarios where approval may be sought by these activities. Notably, approvals can only be issued to a 'facility' and therefore cannot be used for the approval of a 'process' used across multiple sites that may satisfy clause 11(3)(c) of the EPP.

The facility's application should describe the nature and extent of source separation and general character of arrangements for the collection of materials for resource recovery.

These requirements would also be considered in the case of argument arising about whether a waste handling activity satisfies clause 11(3)(c) of the EPP when an approval is not held.

¹⁸ As discussed in section 2.3.

The EPA will approve a facility (ie not within the scope of sections 4.2–4.4) under clause 11 of the EPP if it has source separation of, and designated storage areas for, all of the following wastes (as relevantly generated or handled at the facility):

- hazardous wastes, lead acid batteries, oils, whole tyres, gas bottles,
- cardboard and paper, metals, plastics (excluding plastic films), glass, vegetative matter, food waste, CDL packaging,
- bricks, concrete, timber suitable for recovery, and
- whitegoods, computers, televisions, other electronic wastes and fluorescent lighting.

Resource recovery at an approved facility will also need to comply with any relevant licence conditions (if a licensed activity) and the EPA guidelines established for clause 11(8) of the EPP. The handling of banned wastes will need to comply with the EPA guidelines established for clause 12(4) of the EPP.

6 The EPA's approach to applying conditions to clause 11 approvals

Clause 11 approvals may be granted subject to such conditions as the EPA thinks fit¹⁹. Conditions may be varied by the EPA by the addition, substitution or deletion of one or more conditions from time to time²⁰. Where an activity seeking a clause 11 approval is licensed, the EPA considers it most appropriate that licence conditions be used to govern resource recovery requirements.

Where these guidelines specify requirements for approval (refer to boxed text), these requirements may form conditions of the clause 11 approval.

A key purpose in attaching conditions is to regulate when a determination may be made that waste not be subject to treatment, or further treatment, for resource recovery prior to disposal to landfill. The matters to be considered in determining these conditions are discussed in the EPA guidelines established for clause 11(8) of the EPP since similar considerations apply to licensed material recovery facilities or composting depots as well as activities (licensed or unlicensed) that may seek a clause 11 approval.

7 Consequences of failing to comply with a clause 11 approval

If a facility that holds a clause 11 approval ceases to meet its approval requirements (refer to boxed text), its approval could be revoked. This would mean that its waste can no longer be disposed of to landfill but will need to be directed to a facility that undertakes resource recovery processes in accordance with the EPP.

If a facility that holds an approval is not meeting its requirements (refer to boxed text), the EPA could also take enforcement action against the facility operator for breach of clause 11(3), a mandatory provision, on the basis that waste has been sent to landfill without being subject to resource recovery processes, given the requirements arising under clause 11(8).

¹⁹ EPP clause 11(6).

²⁰ EPP clause 11(6)–(7).

8 Linkage with the handling of banned wastes

Clause 12 of the EPP establishes landfill bans and also states that if waste is received for disposal at a landfill depot from:

- a a licensed material recovery facility authorised to receive that type of waste,
- b a licensed composting depot authorised to receive that type of waste, or
- c another EPA approved facility (clause 12),

the landfill can simply receive waste for disposal (as a determination is taken to have already been made that no further treatment for the removal of banned wastes is needed)²¹.

A facility that the EPA approves under clause 11 will also be approved by default at the same time for the purposes of clause 12 of the EPP. No additional conditions will apply.

Disclaimer

This publication comprises guidelines to clarify the approach that will be used in issuing approvals under clause 11 of the *Environment Protection (Waste to Resources) Policy 2010*. It seeks to explain your possible obligations in a helpful and accessible way. In doing so, however, some detail may not be captured. It is important, therefore, that you consider your own circumstances and possible obligations and, where appropriate, that you seek your own legal advice.

Further information

Legislation

Legislation may be viewed on the Internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet
Adelaide Service SA Centre
108 North Terrace
Adelaide SA 5000

Telephone: 13 23 24
Facsimile: (08) 8204 1909
Website: <shop.service.sa.gov.au>

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²¹ EPP clause 12(4)–(5).

Appendix 1 Clause 11 of the policy

Extracted from the EPP dated 24 November 2011. Please check for currency at <www.legislation.sa.gov.au>.

Definitions of terms used in this provision may be found in the EPP and Act. The Act sets out offence amounts.

11—Waste to be treated prior to disposal to landfill

(1) This clause applies to waste produced in an area specified in Schedule 2 other than waste excluded from the application of this clause by Schedule 3.

(2) This clause will not apply until the second anniversary of the day fixed by the Governor for this policy to come into operation.

(3) A person must not dispose of waste to which this clause applies at a landfill depot unless the waste results from, or has been subject to, resource recovery processes carried out—

- (a) at an appropriate licensed material recovery facility or composting depot; or
- (b) at some other facility that has been approved by the Authority for the purposes of this clause; or
- (c) in accordance with the waste management hierarchy and to the extent reasonably achievable.

Mandatory provision: Category B offence.

(4) The operator of a landfill depot must not receive waste to which this clause applies for disposal at the depot unless the waste results from, or has been subject to, resource recovery processes carried out—

- (a) at an appropriate licensed material recovery facility or composting depot; or
- (b) at some other facility that has been approved by the Authority for the purposes of this clause; or
- (c) in accordance with the waste management hierarchy and to the extent reasonably achievable.

Mandatory provision: Category B offence.

(5) For the purposes of this clause, waste received at a landfill depot will be taken to result from, or have been subject to, resource recovery processes if it has been received from—

- (a) an appropriate licensed material recovery facility or composting depot; or
- (b) some other facility that has been approved by the Authority for the purposes of this clause.

(6) The Authority may—

- (a) grant an approval to a facility for the purposes of subclauses (3), (4) and (5) subject to such conditions as the Authority thinks fit (and the Authority may vary those conditions from time to time);
- (b) revoke such an approval on such grounds as the Authority thinks fit.

(7) The conditions of an approval may be varied by the addition, substitution or deletion of 1 or more conditions.

(8) In this clause—

resource recovery processes means processes carried out for resource recovery, which may include a determination, following examination of waste, that the waste need not be subject to treatment, or further treatment, for resource recovery so long as any such determination is made in accordance with—

- (a) any licence conditions that are expressed to apply for the purposes of this clause; or
- (b) any conditions that apply under subclause (6); or
- (c) any guidelines published from time to time by the Authority for the purposes of this clause.