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**WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2001**  
Section 28(2) Order replacing the processing refund protocol

I, Sanjay Sridher, Executive Director Circular Economy and Resource Management,  
Department of Planning, Industry and Environment:

**Revocation of the existing protocol**

1. Revoke the protocol issued under section 28 of the *Waste Avoidance and Resource Recovery Act 2001* by Barry Buffier AM by order dated 17 August 2017 and published in the NSW Government Gazette No 89 of 18 August 2017 at page 4419.

**Issuing a new protocol**

2. Under section 28(2) of the *Waste Avoidance and Resource Recovery Act 2001*, issue the Material Recovery Facility Processing Refund Protocol in the following Schedule to be applied in determining the amounts payable to material recovery facility operators as processing refunds under a Scheme Coordinator Agreement.

This Order commences on the date it is published in the NSW Government Gazette.

Signed and dated: 4/2/2020

**Sanjay Sridher**

as sub-delegate of the Chief Executive Officer of the Environment Protection Authority under s 21 of the *Protection of the Environment Administration Act 1991*.

# Container Deposit Scheme Material Recovery Facility Processing Refund Protocol

January 2020

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# Contents

<b>1. About this Document</b>	<b>3</b>
<b>2. Review of Protocol</b>	<b>3</b>
<b>3. Definitions</b>	<b>3</b>
<b>4. Aims of the Protocol</b>	<b>4</b>
<b>5. Making a Claim</b>	<b>4</b>
5.1 Available Methods	4
5.2 Measurement and Reporting of Total Materials Received by the MRF Operator	5
5.3 Output Material Types	6
5.4 Method 1 – Weighing	6
5.5 Method 2 – Direct Counting (Manual or Automated)	7
5.6 Making a Processing Refund Claim	7
5.7 Information to be included with all Processing Refund Claims	7
5.8 Information to be Verified	8
5.9 Manner of Lodging	8
<b>6. Assessment of Claims</b>	<b>8</b>
6.1 Calculation of the number of Eligible Containers by Output Material Type	9
6.2 Receiving Containers from States other than NSW	9
6.3 Calculation of the Total Processing Refund Payable	10
6.4 Deduction of Sampling Cost	10
6.5 Claim Assessment	10
6.6 Timeframe for Issuing Claim Assessment	11
6.7 Timeframe for Payment of Processing Refunds	11
6.8 Refusal of Claims	11
6.9 Amending Processing Refund Claims- MRF Operator Initiated	11
6.10 Amending Processing Refund Claims – Scheme Coordinator Initiated	11
6.11 Review of Claim Assessments	12
6.12 Reconciliation of Payment of Processing Refunds	12
<b>7. Eligible Container Factor</b>	<b>12</b>
7.1 Determining Eligible Container Factor	12
7.2 Sampling Plan	13
7.3 Publishing of Eligible Container Factor	13
<b>8. Inter- MRF Transfers</b>	<b>13</b>
8.1 Approval Requirements	14
8.2 Transfer Incidents	15
8.3 Excluded Scenarios	15

8.4 Specific Processes for Sending and Receiving MRF Operators	15
<b>9 Reporting and Recording Keeping Requirements</b>	<b>16</b>
9.1 Annual Recycling Statement	16
9.2 Throughput Reconciliation	16
9.3 Record Keeping	17
<b>10. Assurance Requirements</b>	<b>17</b>
10.1 Independent Assurance Report	17
10.2 Scheme Coordinator Initiated Assurance	17
10.3 Assurance Team Leader Duties	18
<b>11. Dispute Resolution</b>	<b>18</b>
11.1 Mediation	18
11.2 Expert Determination	19
11.3 Payment Must not be Withheld	19
11.4 Repeal of Protocol	19
<b>12. Compliance Audits</b>	<b>19</b>

# 1. About this Document

This document is the Material Recovery Facility “Processing Refund Protocol” (Protocol) referred to in the Waste Avoidance and Resource Recovery Act 2001 and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (Regulation). It sets out the methodology to be applied in determining the amounts payable to material recovery facility (MRF) operators as processing refunds under the NSW Container Deposit Scheme.

**This Protocol does not apply to MRF operators that are a bottle crushing service operator or an alternative waste treatment plant operator. A separate Protocol will have to be published for each of these classes of MRF operators.**

In the case of any inconsistency between the Protocol and the Regulation, the latter prevails to the extent of the inconsistency.

## 2. Review of Protocol

The Protocol will be reviewed, at a minimum, within five years of its publication, but may be reviewed more frequently when considered appropriate by the EPA.

## 3. Definitions

Terms within this Protocol have the same meaning as defined within the *Waste Avoidance and Resource Recovery Act 2001* (the Act), including Part 5 of that Act, and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (the Regulation).

However, this Protocol does not apply to MRF operators who are bottle crushing service operator or an alternative waste treatment plant operator. Therefore, a reference to “MRF operator” in Sections 5 to 12 of this Protocol does not include a reference to these MRF operators.

### Abbreviations

NSW	New South Wales
EPA	NSW Environment Protection Authority
CDS	NSW Container Deposit Scheme
MRF	Material Recovery Facility
Protocol	Material Recovery Facility Processing Refund Protocol
LPB	Liquid paperboard
HDPE	High-density polyethylene
PET	Polyethylene terephthalate

## Definitions

Recyclable Materials	Any or all of aluminium, PET, HDPE, Mixed plastics (PET, HDPE and other plastics), glass, steel and/or LPB
Scheme eligible material	material processed by an MRF operator that is eligible for a refund claim
Scheme material	Any material received from a network operator, a collection point operator or another MRF operator. This material is not eligible for a refund claim, except where it meets the requirements for an inter-MRF transfer in this Protocol and is approved in accordance with section 9 of this Protocol

## 4. Aims of the Protocol

The aims of the Protocol are to:

- Protect the integrity of the CDS
- Maximise legitimate returns to communities
- Support equity between participants
- Promote efficiency

## 5. Making a Claim

An MRF operator may make a claim for the payment of a processing refund by lodging a processing refund claim with the Scheme Coordinator in the approved form and manner. For each quarter, only one claim can be made by an MRF operator for each MRF that they operate. The claim must cover relevant information for all eligible containers that the MRF operator intends to make a processing refund claim upon for that quarter.

In order to make a processing refund claim, an MRF operator must undertake the following:

- Select a Method to estimate the number of eligible containers delivered from each MRF for reuse or recycling (Section 5.1);
- Measure and report the total weight of materials received at each MRF by source (Section 5.2);
- Where Method 1 has been selected, measure and report the total tonnes delivered each month from each MRF for reuse or recycling by output material type as defined in Section 5.3 (Section 5.4);
- Where Method 2 has been selected, count and report the total number of eligible containers delivered each month from each MRF operator for reuse and recycling by output material type as defined in Section 5.3 (Section 5.5);

### 5.1 Available Methods

One of the following methods must be used for estimating the total number of eligible containers processed for reuse or recycling by the MRF operator during any given quarter:



- (a) Method 1 – Weighing (refer to Section 5.4); or
- (b) Method 2 – Direct Counting (refer to Section 5.5).

An MRF operator must nominate to the EPA and the Scheme Coordinator which Method they will use for each output material type (see Section 5.3). This nomination must be made using the *NSW Container Deposit Scheme - MRF Claim Method Nomination Form* available on the EPA website and submitted to the EPA and the Scheme Coordinator at least 28 calendar days before the commencement of the first quarter. Different Methods may be nominated for different output material types.

If an MRF operator wishes to change the nominated Method, an updated *NSW Container Deposit Scheme - MRF Claim Method Nomination Form* must be submitted to the EPA and the Scheme Coordinator at least 28 calendar days before the commencement of the quarter for which the changed Method is to be used.

## 5.2 Measurement and Reporting of Total Materials Received by the MRF Operator

### Measurement

Each MRF operator must measure and record the total quantity and source of all material received at each MRF. The quantity of materials received at each MRF must be determined by measuring the weight of that material using calibrated weighing equipment, and in accordance with the *National Measurement Act 1960* and with the following:

- The weight must be measured in tonnes;
- The weight must be measured using weighing equipment that has the following minimum accuracy:
  - For weighbridges: +/- 20kg;
  - For all other weighing equipment: +/- 1 kg
- The weight must be recorded to a minimum two decimal places;
- The source of each load received at the MRF must be recorded as being from one of the following sources:
  - Material received from a Network Operator or a Collection Point Operator or another MRF operator (Scheme material);
  - Material received from another State or Territory including the relevant State or Territory;
  - Material received from sources inside NSW excluding Scheme material.

These sources are mutually exclusive;

- Weighing equipment must be calibrated in accordance with all manufacturer requirements; and
- Weighbridges, where used as weighing equipment for the purpose of this Section, must be verified (within the meaning of the *National Measurement Act 1960*) at least once per year.

With respect to Scheme material, the claimant MRF operator must ensure that:

- The Scheme material is received, counted or processed and weighed, stored and delivered from the MRF separately from all other materials received at the MRF; and
- the receipt, processing, counting, weighing, storage and delivery from the MRF of the Scheme material is recorded so that the throughput of this material through the MRF can be tracked and audited at all times

### Reporting

The MRF operator must report for each month the following information to the Scheme Coordinator in the manner advised by the Scheme Coordinator within 14 days after the end of that month:

- The total measured weight of all material received in that month at the MRF by source; and
- The total measured weight of all Scheme material:
  - received in that month at the MRF; and
  - counted or processed and stored at the MRF in that month.

### 5.3 Output Material Types

Under both Method 1 and Method 2, output materials delivered from the MRF for the purpose of reuse or recycling must be separated into one or more of the following output material types:

1. Aluminium
2. PET
3. HDPE
4. Mixed plastics (PET, HDPE and other plastics)
5. Glass
6. Steel
7. LPB
8. Other output material (as approved in writing by the EPA).

An MRF operator seeking approval of other output materials must make an application for such approval using the *NSW Container Deposit Scheme - MRF Output Material Type Assessment Form* available on the EPA website. The form must be received by the EPA at least 28 calendar days before the commencement of the first quarter for which the MRF intends to make a processing refund claim for the output material type for which approval is sought.

### 5.4 Method 1 – Weighing

Each MRF operator applying Method 1 for one or more output material types (as detailed in Section 6.3) must measure and record the quantity of each of these output material types, excluding any Scheme material, that are delivered from the MRF for reuse or recycling.

The quantity of each relevant output material type delivered from the MRF must be determined by measuring the weight of each output material type using calibrated weighing equipment and in accordance with the following:

- The weight of each output material type must be measured in tonnes;
- The weight must be measured using weighing equipment that has the following minimum accuracy:
  - For weighbridges: +/- 20kg;
  - For all other weighing equipment: +/- 1 kg
- The weight must be recorded to a minimum 2 decimal places;
- The date of delivery and destination of each load delivered from the MRF must be recorded;
- Weighing equipment must be calibrated in accordance with manufacturer requirements; and
- Weighbridges, where used as weighing equipment for the purpose of this Section, must be verified (within the meaning of the *National Measurement Act 1960*) at least once a year.

#### Reporting

The MRF operator must report for each month the following information to the Scheme Coordinator in the manner and format advised by the Scheme Coordinator within 14 days after the end of that month:

- The total measured weight of each relevant output material type (excluding any Scheme material) delivered from the MRF for reuse or recycling
- The total measured weight of Scheme material delivered from the MRF by output material type

## 5.5 Method 2 – Direct Counting (Manual or Automated)

Each MRF operator applying Method 2 for one or more output material types (as detailed in Section 5.3) must count the number of individual eligible containers of each relevant output material type, excluding any Scheme material, delivered from the MRF for reuse or recycling.

Counting under Method 2 may be undertaken on a manual or automated basis. Where Method 2 is applied, manual recounts must be undertaken monthly of the proportion of containers determined in accordance with the Sampling Plan prepared by the EPA (as detailed in Section 7.2) to assess the accuracy of the counting procedures undertaken. Documentary evidence of all recounts must be maintained. Manual recounts can be undertaken concurrently where counting under Method 2 is undertaken on an automated basis.

### Reporting

The MRF operator must report for each month the following information to the Scheme Coordinator in the manner advised by the Scheme Coordinator within 14 days after the end of that month:

- the number of eligible containers, excluding any Scheme material, delivered from the MRF for reuse or recycling, by output material type; and
- the number of eligible containers that are Scheme material delivered from the MRF, by output material type.

## 5.6 Making a Processing Refund Claim

An MRF operator may make a processing refund claim to the Scheme Coordinator each quarter for each MRF. The claim must:

- a. be made using the *NSW Container Deposit Scheme - Quarterly Claim Form* available on the EPA website; and
- b. include any information required under the *Waste Avoidance and Resource Recovery Act 2001*, the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* or prescribed under the Protocol (together, the “Processing Refund Requirements”); and
- c. be accompanied by any documents or reports required by the Processing Refund Requirements; and
- d. be assessed by an approved person, as detailed in Section 5.8(a), for the purposes of determining whether the Protocol has been correctly applied in determining the amount of the claim; and
- e. be signed by an approved person, as detailed in Section 5.8(a), on behalf of the MRF operator; and
- f. be accompanied by a statutory declaration signed and completed in accordance with Section 5.8 by the approved person who has assessed the claim under Section 5.6(d).
- g. be lodged with the Scheme Coordinator in the manner advised by the Scheme Coordinator, and received within 28 calendar days of the end of the quarter in the approved manner as detailed in Section 6.9; and

## 5.7 Information to be included with all Processing Refund Claims

The following information is prescribed for the purposes of inclusion in each processing refund claim made under Section 5 of the Protocol:

- a. the name, address and contact details of the MRF operator;
- b. the ABN and ACN of the MRF operator;
- c. the name and work contact details of a contact person for the claim;
- d. the total weight of materials received at the MRF during the quarter, by source;
- e. the total weight of Scheme material received at the MRF during the quarter;

- f. the total weight of material, excluding any Scheme material, that has been delivered from the MRF for reuse or recycling during the quarter by output material type (where Method 1 is used for that output material type);
- g. the total number of eligible containers, excluding any Scheme material, that has been delivered from the MRF for reuse or recycling during the quarter by output material type (where Method 2 is used for that output material type); and
- h. bank account details, including BSB and account number, for payment of processing refunds.

## 5.8 Information to be Verified

The processing refund claim must:

- (a) be verified by a statutory declaration signed by an approved person, who is one of the following:
  - i. a director of the MRF operator or the ultimate parent entity of the MRF operator;
  - ii. the chief executive officer of the MRF operator or the ultimate parent entity of the MRF operator;
  - iii. the chief financial officer of the MRF operator or the ultimate parent entity of the MRF operator; or
  - iv. the company secretary of the MRF operator or the ultimate parent entity of the MRF operator; or
  - v. any designated person to whom the above persons have delegated their authority in writing; and
- (b) state that:
  - i. based on all reasonable steps having been taken to verify the information in the claim, the claim is accurate and complete as far as the person verifying knows; and
  - ii. the claimant has correctly applied the Protocol in determining the details of the claim.
  - iii. the claimant confirms that the import ratio is true and correct; and
  - iv. The claimant confirms that, to the best of its knowledge, the material the subject of the claim has not been and will not be the subject of a claim for refund amounts or processing refunds by any other MRF operator, Network Operator or Collection Point Operator under the *Waste Avoidance and Resource Recovery Act 2001*
  - v. The claimant confirms that, to the best of its knowledge, the material has not been received at the MRF before 1 December 2017.

## 5.9 Manner of Lodging

A claim under Section 6 of the Protocol must be submitted to the Scheme Coordinator and the EPA in the approved manner as set out within the *NSW Container Deposit Scheme - Quarterly Claim Form* available on the EPA website.

# 6. Assessment of Claims

The Scheme Coordinator is required, on receiving a valid processing refund claim, to pay a MRF operator a processing refund for eligible containers that have been actually processed for reuse or recycling by the MRF operator (excluding those eligible containers received from interstate or received before 1 December 2017 and Scheme material). The amount payable by the Scheme Coordinator to a MRF operator must be determined using the calculation detailed in Section 6.3.

## 6.1 Calculation of the number of Eligible Containers by Output Material Type

### 6.1.1. Method 1

Where an MRF operator makes a processing refund claim using Method 1 for a particular output material, the Scheme Coordinator must determine the estimated number of eligible containers processed for reuse or recycling during the quarter using the following calculation:

$$E_i = (Q_i \times S \times EF_i)$$

Where:

$E_i$  is the estimated number of eligible containers processed for reuse or recycling during the quarter for output material type (i) for the quarter.

$Q_i$  is the total weight of output material type (i) measured in tonnes delivered from the MRF for reuse or recycling during the quarter, excluding any Scheme material.

$S$  is the import ratio determined using the calculation detailed in Section 6.2.1.

$EF_i$  is the eligible container factor for output material (i) as referenced in Section 7.

### 6.1.2. Method 2

Where an MRF operator makes a processing refund claim using Method 2, for a particular output material, the Scheme Coordinator must determine the estimated number of eligible containers processed for reuse or recycling during the quarter using the following calculation:

$$E_i = (QE_i \times S)$$

Where:

$E_i$  is the estimated number of eligible containers processed for reuse or recycling during the quarter for output material type (i).

$QE_i$  is the total counted number of eligible containers for output material type (i) delivered from the MRF for reuse or recycling during the quarter, excluding any Scheme material.

$S$  is the import ratio determined using the calculation detailed in Section 6.2.1.

## 6.2 Receiving Containers from States other than NSW

MRF operators receiving material from sources outside of NSW are not entitled to a refund for containers received from those sources.

### 6.2.1 Import ratio

Where an MRF operator has received materials from sources outside of NSW, claims for eligible containers will be assessed and refunds calculated by the Scheme Coordinator by applying the ratio of materials received from NSW sources to total materials received by the MRF against the total estimated number of eligible containers delivered from the MRF using the following calculation:

$$S = N/T$$

Where:

$S$  is the import ratio.

$N$  is the total weight of material received at the MRF from sources within NSW, excluding any Scheme material.

T is the total weight of all material received at the MRF, excluding any Scheme material.

## 6.3 Calculation of the Total Processing Refund Payable

The Scheme Co-ordinator must calculate the total processing refund payable to a MRF for each quarter using the following calculation:

$$P_i = \sum E_i \times RA$$

Where:

$P_i$  is the Total Processing Refund Payable to the MRF Operator for the quarter.

$\sum E_i$  is the sum of the estimated number of eligible containers processed and delivered for reuse or recycling during the quarter for all output material types (i), excluding any Scheme material.

RA is the refund amount per eligible container, as set out in the Regulation.

## 6.4 Deduction of Sampling Cost

The Scheme Co-ordinator may deduct from the Total Processing Refund Payable for each MRF Operator the monetary cost incurred to undertake the procedures set out in the Sampling Plan (Section 8.2) prepared by the EPA and approved by the Container Deposit Scheme Ministerial Advisory Committee under Section 8.4. This cost shall be recovered proportionally from each Processing Refund Claim as follows:

$$D_i = \sum \left( \left( \frac{\sum E_{i(MRF)}}{\sum E_{i(Total)}} \right) \times C_{i(Total)} \right)$$

Where:

D is the sampling cost deduction for the MRF operator for the quarter

$\sum E_{i(MRF)}$  is the sum of the estimated number of eligible containers processed for reuse or recycling during the quarter for each output material type (i) for that MRF Operator.

$\sum E_{i(Total)}$  is the sum of the estimated number of eligible containers processed for reuse or recycling during the quarter for each output material type (i) for all MRF Operators.

$C_{i(Total)}$  is the total monetary cost incurred by the Scheme Coordinator to undertake the Sampling Plan for the quarter for each output material type (i).

## 6.5 Claim Assessment

Where an MRF Operator makes a processing refund claim under Section 5, the Scheme Coordinator must issue the MRF Operator with a claim assessment. The claim assessment must include:

- (a) the total processing refund payable to the MRF Operator for the quarter;
- (b) the sampling cost deduction for the MRF Operator for the quarter;
- (c) the sum of the estimated number of eligible containers processed for reuse or recycling during the quarter for all output material types (i);
- (d) where Method 1 was used for any output material type (i):
  - a. the total weight of each output material type for the quarter, excluding any Scheme material;
  - b. the eligible container factor applied to each output material type (i) for the quarter;
  - c. the import ratio applied in calculating the estimated number of eligible containers processed for reuse or recycling during the quarter for output material type (i); and
  - d. the estimated number of eligible containers delivered for reuse or recycling during the quarter for output material type (i);

- (e) where Method 2 is used for any material type (i):
  - a. the total counted number of eligible containers processed for reuse or recycling by the MRF for each material type in the quarter excluding any Scheme material;
  - b. the import ratio applied in calculating the estimated number of eligible containers processed for reuse or recycling during the quarter for output material type (i); and
  - c. the estimated number of eligible containers delivered for reuse or recycling during the quarter for output material type (i); and
- (f) any other information required by the Processing Refund Requirements.

## 6.6 Timeframe for Issuing Claim Assessment

Where an MRF operator makes a processing refund claim under Section 5, the Scheme Coordinator must issue the MRF operator with a claim assessment in accordance with Section 6.4 within 45 calendar days of the end of the quarter to which the claim relates. Where the 45<sup>th</sup> calendar day falls on a weekend or public holiday, the claim assessment may be issued on the next business day.

## 6.7 Timeframe for Payment of Processing Refunds

Processing refunds must be deposited into the nominated bank account of the MRF operator within 10 business days of the issuance of the claim assessment by the Scheme Coordinator. The nominated bank account is the bank account listed by the MRF operator on the *NSW Container Deposit Scheme - Quarterly Claim Form* for that quarter.

## 6.8 Refusal of Claims

The Scheme Coordinator may refuse a processing refund claim or any aspect of a processing refund claim where it reasonably determines that a claim has not been made in accordance with the Protocol.

## 6.9 Amending Processing Refund Claims- MRF Operator Initiated

The Scheme Coordinator may amend a processing refund claim if the MRF operator to whom the claim assessment is issued requests, in writing, an amendment. A request for an amendment must be made within 100 calendar days from the date of the original claim and include relevant information supporting the requested amendment. Requests for amendment of a processing refund claim will not be accepted where the initial processing refund claim was not lodged with the Scheme Coordinator and the EPA within 28 calendar days of the end of the quarter in the approved manner as detailed in Section 5.9.

In deciding whether to amend a processing refund claim, the Scheme Coordinator:

- (a) must have regard to the matters required by the Processing Refund Requirements; and
- (b) may have regard to any other matter that it considers relevant.

If the Scheme Coordinator refuses to amend a claim assessment upon request by a MRF operator, the Scheme Coordinator must notify the MRF operator accordingly and provide clear and justifiable reasons for refusing.

## 6.10 Amending Processing Refund Claims – Scheme Coordinator Initiated

The Scheme Coordinator may amend a processing refund claim if:

- (a) a qualified assurance conclusion;
- (b) an adverse conclusion; or
- (c) a conclusion that the assurance provider is unable to form an opinion about the matter being assured;

is issued in relation to assurance carried out under Section 10 of the Protocol.

If the Scheme Coordinator amends a claim assessment/s on this basis, the Scheme Coordinator must notify the MRF operator accordingly and provide clear and justifiable reasons for the amendment.

## 6.11 Review of Claim Assessments

An MRF operator may request the Scheme Coordinator to reconsider an assessment made under Section 6.4, 6.8 or 6.9. The request must be:

- (a) in writing;
- (b) provide a description of the matter to be reconsidered with reference to the Protocol and relevant supporting information and
- (c) received by the Scheme Coordinator no later than 60 calendar days after the assessment is made.

The Scheme Coordinator must reconsider the assessment and confirm, vary or set aside the original assessment. The Scheme Coordinator must give written notice of its decision regarding the reconsideration to the MRF operator within 60 calendar days after the request is received by the Scheme Coordinator.

## 6.12 Reconciliation of Payment of Processing Refunds

### 6.12.1 Underpayment

Where a processing refund claim is amended or reviewed in accordance with Section 6.8, 6.9 or 6.10 and it is determined that there has been an underpayment to the MRF operator, the Scheme Coordinator must deposit the outstanding processing refund amount into the nominated bank account of the MRF operator within 10 business days of amending the claim under Section 6.8 or 6.9 and within 10 business days of the provision of written notice of decision under Section 6.10. The nominated bank account is the bank account listed by the MRF operator on the *NSW Container Deposit Scheme - Quarterly Claim Form* for that quarter.

### 6.12.2 Overpayment

Where a processing refund claim is amended or reviewed in accordance with Section 6.8, 6.9 or 6.10 and it is determined that there has been an overpayment to the MRF operator, the Scheme Coordinator must advise the MRF operator in writing that there has been an overpayment and detail the extent of that overpayment. The MRF operator must reimburse the Scheme Coordinator the total amount that has been overpaid within 10 business days of being notified of the overpayment by the Scheme Coordinator. Where a MRF operator is financially unable to meet this requirement, a repayment plan is to be negotiated between the MRF operator and the Scheme Coordinator.

# 7. Eligible Container Factor

## 7.1 Determining Eligible Container Factor

The eligible container factor ( $EF_i$ ) referred to in Section 6.1 will be calculated by the EPA and approved by the Container Deposit Scheme Ministerial Advisory Committee.

The eligible container factor for each output material type will be determined using:



- Sampling data
  - from MRFs collected in accordance with the Sampling Plan prepared by the EPA and approved by the Container Deposit Scheme Ministerial Advisory Committee;
- Claim information
- Any other relevant information

## 7.2 Sampling Plan

The EPA will prepare a Sampling Plan for the following purposes:

- In relation to Method 2—to set out the proportion of containers to be manually recounted to assess the accuracy of container counts
- In relation to the determination of the Eligible Container Factor—to set out the sampling requirements for the collection of representative data on the number of eligible containers per tonne of material processed at MRF Operators across NSW.

The Sampling Plan will be approved by the Container Deposit Ministerial Advisory Committee.

### 7.2.1. Facility based sampling

For each quarter, the Scheme Coordinator will arrange and pay for independent sampling auditors to undertake facility based sampling in accordance with the Sampling Plan. All sampling results will be provided by the independent sampling auditors to the EPA to enable it to calculate the eligible container factor (EF<sub>i</sub>) referred to in Section 6.1.

The Scheme Coordinator may arrange with an MRF operator for the sampling auditors to take samples at their facilities at any time within normal business hours. The MRF operator must provide all reasonable assistance and facilities required by the sampling auditor and their team.

## 7.3 Publishing of Eligible Container Factor

The EPA will publish the eligible container factor for the quarter within 43 calendar days after the last day of the quarter. Where the 43<sup>rd</sup> calendar day falls on a weekend or public holiday, the eligible container factor may be published on the next business day.

**Note:** The EPA will determine the Eligible Container Factor for each quarter based on a range of data, predominantly from sampling of MRF Operators. In the initial stages of the scheme, the factor will be determined after each quarter to ensure it accounts for any changes in MRF Operator inputs during that time. As more data is collected, and as MRF Operator inputs re-stabilise over time, the EPA will review this approach with a view to releasing the factor prior to each quarter, or potentially half yearly or annually.

# 8. Inter- MRF Transfers

There are some instances where MRF operators receive material from another MRF operator that has not yet been processed (**‘Inter-MRF Transfer’**).

If an Inter-MRF Transfer fulfils the requirements in this section 8 and any additional requirements imposed by the Scheme Coordinator, then it will be considered Scheme eligible material on which the receiving MRF operator can make a claim on.

## 8.1 Approval Requirements

### 8.1.1. Applying for approval

An MRF Operator must be requiring to transfer material (**'Sending MRF operator'**) to another MRF operator (**'Receiving MRF Operator'**) as a direct result of a scenario listed in section 8.2 (**'Transfer Incident'**) and must seek approval from the Scheme Coordinator:

- a. in the form specified by the Scheme Coordinator;
- b. stating the reason for the inter-MRF transfer request;
- c. stating who the Receiving MRF Operator is;
- d. **10 business days** in advance of the transfer.

The Scheme Coordinator may at their own discretion approve more immediate transfers in the case of unplanned and unforeseen operational disruptions.

### 8.1.2 Approval from Scheme Coordinator

The Scheme Coordinator will consider the following when determining approval of a request for an Inter-MRF transfer:

- a. the Sending MRF operator has sought approval of the transfer from the Scheme Coordinator in accordance with section 8.1.1 and any additional approval requirements as determined by the Scheme Coordinator;
- b. the reason for transfer is in accordance with section 8.2 and is not an excluded scenario outlined in section 8.3;
- c. as at the proposed start date of transfer, no current claim exists in relation to the transferred material;
- d. that the sending and receiving MRF Operators can meet all the requirements outlined in this section 8; and
- e. at the time of seeking approval in clause 8.1.2, both the Sending MRF operator and Receiving MRF operator are registered with the EPA in accordance with the registration process stated on the EPA's website, as amended from time to time.

The Scheme Coordinator will notify the Sending MRF operator and Receiving MRF operator the result of the application for approval, including the time period within which materials may be transferred and considered eligible for claim by the receiving MRF (**'Approved Transfer Period'**).

For example, the Scheme Coordinator may approve a transfer period of two business days from the date of approval starting 9am on Day 1 until 4pm the following day (Day 2). If the Sending MRF operator does not affect the transfer within the Approved Transfer Period, then the transferred material will not be considered Scheme eligible material, unless the Scheme Coordinator decides otherwise. The Sending MRF operator may seek re-approval of the transfer if the approved transfer period has lapsed before the transfer could be completed.

### 8.1.3. Access to facilities

For transferred materials to be consider Scheme eligible materials, the Sending and Receiving MRF operators must provide access to the Scheme Coordinator, or the EPA, as requested to conduct site inspections of any facility owned by the MRF operators in order to:

- a. validate the reason for an Inter-MRF Transfer;
- b. inspect materials subject to an Inter-MRF Transfer claim;
- c. validate the appropriate segregation of such materials from other materials at the MRF; and
- d. any other purpose deemed necessary to validate compliance with this section.

The Scheme Coordinator will provide reasonable notice to the MRF Operator prior to inspection.

#### 8.1.4. Application of approval

Any approval given in accordance with this section 8, only applies to the single Transfer Incident that is the subject of that approval and will lapse at the end of the Approved Transfer Period.

The MRF operator that has approval may not conduct subsequent Inter-MRF Transfers under the same approval from the Scheme Coordinator. MRF Operators must obtain a separate approval for each Transfer Incident that occurs.

Similarly, any approval given by the Scheme Coordinator must only be given to the Sending MRF operator and Receiving MRF operator that is the subject of the approval application. MRF operators must not assume that if one MRF operator has been approved to conduct an Inter-MRF Transfer for a particular reason, that this extends to any or all other MRF operators. The Scheme Coordinator will consider each Inter-MRF Transfer as a single and distinct incident.

## 8.2 Transfer Incidents

The following scenarios are considered to be Transfer Incidents:

1. An MRF is not operating due to a malfunction or planned maintenance that impacts the MRF's ability to handle, measure and process material for recycling and re-use; or
2. An MRF does not have the ability or capacity to process material to a required standard for recycling and re-use; or
3. Any other scenario approved by the Scheme Coordinator on a case-by-case basis at the time of considering the application.

## 8.3 Excluded Scenarios

The following scenarios are **not** Eligible Inter-MRF Transfers regardless of whether they fall within the scenarios listed in section 8.2:

1. Transfers involving material originally received from a network operator;
2. Transfers involving materials that have been processed or partly processed to any degree;
3. Any other scenario reasonably determined by the Scheme Coordinator as notified to the MRF operators in writing via newsletter, written correspondence, website or the Scheme Coordinator Portal.

## 8.4 Specific Processes for Sending and Receiving MRF Operators

### 8.4.1 Before transfer

Before transferring the materials, the Sending MRF operator must:

- a. Have obtained approval from the Scheme Coordinator in accordance with Section 8.1;
- b. Weigh and record incoming material to be transferred by source (e.g. the council area it was collected from) in a format required by the Scheme Coordinator; and
- c. Where possible, not unload material to be transferred; however, if unloaded, weigh before and after loading, record materials by source (e.g. the council area it was collected from) and keep all material for transfer quarantined from all other MRF and Scheme material.

### 8.4.2 During and after the approved transfer

- a. the Receiving MRF operator must weigh and record all transferred material from the Sending MRF operator (in a format required by the Scheme Coordinator) immediately after the transferred materials have arrived at the Receiving MRF;
- b. the Receiving MRF operator must record the reason and the source (e.g. the council area it was collected from) of the transferred material and send a copy of their weighbridge records to the Sending MRF operator;

- c. the Sending MRF operator must obtain a copy of the Receiving MRF operator's weighbridge records from the Receiving MRF operator; and
- d. The Receiving MRF operator must obtain a copy of the Sending MRF operator's weighbridge records from the Sending MRF operator.

### 8.4.3 Claiming a refund

The Receiving MRF operator must:

- a. Meet all other requirements in this Protocol;
- b. Only submit a claim for material that has been delivered for recycling and reuse.

The Sending MRF operator must not submit a claim for material that has been transferred in accordance with this section.

### 8.4.4 Reporting

- a. The Sending MRF operator must report transferred material as outgoing Inter-MRF Transfer material, the source of the material (e.g. council area it was collected from) and the receiving MRF in its Monthly Reports and Annual Throughput Reconciliation; and
- b. The Receiving MRF operator must report material received, the original source of the material (e.g. the council area it was collected from) (to the best of its knowledge) and the Sending MRF in its Monthly Reports, quarterly claim and Annual Throughput Reconciliation.

## 9 Reporting and Recording Keeping Requirements

### 9.1 Annual Recycling Statement

Each MRF operator is required to prepare and submit an Annual Recycling Statement for each MRF to the Scheme Coordinator and the EPA within 60 calendar days of the end of each year ended 30 June (the 'reporting period'). The Annual Recycling Statement must be prepared in accordance with the *NSW Container Deposit Scheme - Annual Recycling Statement template* available on the EPA website at the end of the reporting period, and must contain the following information:

- a. MRF throughput reconciliation, prepared in accordance with Section 9.2;
- b. Where Method 1 has been applied:
- c. the total weight of material processed for reuse and recycling for which a processing refund claim has been made during the reporting period by output material type; and
- d. Where Method 2 has been applied:
- e. the total number of eligible containers counted by the MRF Operator during the reporting period.

### 9.2 Throughput Reconciliation

Each MRF operator is required to prepare an Annual Throughput Reconciliation of all input materials received and all output materials by material type for each MRF, including:

- Total quantity (in tonnes) of material other than Scheme material received at the MRF from NSW sources
- Total quantity (in tonnes) of material received at the MRF from outside NSW
- Total quantity (in tonnes or number or both) of Scheme material received at the MRF, delivered from the MRF and remaining at the MRF at the end of the year
- Total quantity (in tonnes) of material other than Scheme material reused or recycled for

each output material type

- Total opening and closing stock on hand other than Scheme material

## 9.3 Record Keeping

All records of evidence and documents supporting each claim must be kept in a form that is easily and quickly accessible for inspection. This may be an electronic or hard copy format.

MRF operators must keep records of the activities that:

- allow it to report accurately under the Protocol; and
- enable the Scheme Coordinator to ascertain whether the MRF operator has complied with its obligations under the Protocol.

The MRF operator must retain all records for seven years from the end of the reporting period to which the records relate.

# 10. Assurance Requirements

## 10.1 Independent Assurance Report

Each Annual Recycling Statement must be accompanied by an Independent Assurance Report which complies with this Section. Each MRF operator must engage an independent appropriately qualified assurance practitioner at their expense to complete the review and assurance report. The matters to be assured and covered by the assurance report are whether:

Reasonable assurance matters

- (a) the person(s) who have made claims during the reporting period met the definition of a MRF operator in accordance with the Act and Regulations;
- (b) the Annual Recycling Statement has been prepared in accordance with Section 9.1 of the Protocol;
- (c) the quantities of each output material from the MRF Operator during the reporting period measured in accordance with Section 5 of the Protocol;
- (d) the throughput reconciliation for the reporting period, calculated in accordance with Section 9.2 of the Protocol.

Limited assurance matters

- (a) the output materials from the MRF Operator included within the Annual Recycling Statement have been reused or recycled or will be reused or recycled within 12 months from the date that the processing refund claim was submitted.

## 10.2 Scheme Coordinator Initiated Assurance

The Scheme Coordinator may, in addition to the verification activities completed by the Scheme Coordinators' internal audit team, appoint an appropriately qualified assurance practitioner as an assurance team leader to carry out assurance of a MRF operator's compliance with one or more aspects of the Protocol.

The Scheme Coordinator must give written notice to the MRF operator of a decision to appoint an assurance team leader. The notice must:

- (a) specify the assurance team leader; and
- (b) specify the period within which the assurance is to be undertaken; and

- (c) specify the type of assurance to be carried out; and
- (d) specify the matters to be covered by the assurance; and
- (e) be given to the MRF operator at a reasonable time before the assurance is to be undertaken.

The MRF operator must provide the assurance team leader and any assurance team members with all reasonable facilities and assistance necessary for the effective exercise of the assurance team leader's duties under the Protocol.

If an MRF operator is given a notice under this Section, the MRF operator must arrange for the assurance team leader to carry out the assurance.

The costs associated with Scheme Coordinator assurance activities will be covered by the Scheme Coordinator.

## 10.3 Assurance Team Leader Duties

Assurance reports issued under Section 10 of the Protocol must include one of the following conclusions for the matters in Sections 10.1 or 10.2(d):

- (a) a reasonable assurance conclusion;
- (b) a qualified reasonable assurance conclusion;
- (c) an adverse conclusion;
- (d) a conclusion that the assurance provider is unable to form an opinion about the matter being assured.

An assurance report under this Section must be the result of an assurance engagement which:

- (a) was conducted in accordance with the relevant requirements for limited assurance engagements and reasonable assurance engagements under the Australian Standard on Assurance Engagements ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information* and Australian Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*; ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*; and
- (b) had an assurance team leader who is:
  - a. registered as a Registered Company Auditor under the *Corporations Act 2001*; or
  - b. registered as a Category 2 auditor under sub regulation 6.25(3) of the *National Greenhouse and Energy Reporting Processing refund requirements 2008*; or
  - c. Other registered auditors deemed appropriate by the EPA as set out on the EPA NSW website.

# 11. Dispute Resolution

## 11.1 Mediation

Where a dispute between the MRF operator and the Scheme Coordinator, remains unresolved, either party may give written notice to the other party (Mediation Notice) requiring that the dispute be submitted to mediation. The mediation must be in accordance with the Resolution Institute Mediation Rules. The mediator must be:

- (a) agreed between the parties within 10 business days after the receipt of the Mediation Notice; or
- (b) if the parties fail to reach agreement, the President for the time being of the Resolution Institute will nominate the mediator.

Failing any agreement to the contrary by the parties, the costs of mediation will be shared equally between the parties, and each party will bear its own costs.

## 11.2 Expert Determination

Where a dispute between the MRF operator and the Scheme Coordinator remains unresolved after taking part in mediation in accordance with Section 11.1, either party may give written notice to the other party (Expert Determination Notice) requiring that the dispute be submitted for expert determination. The expert determination must be conducted by:

- (a) an independent industry expert agreed by the parties within 10 Business Days after receipt of the Expert Determination Referral; or
- (b) where the parties fail to reach an agreement, an independent industry expert appointed by the President for the time being of the Resolution Institute.

The expert will:

- i. act as an expert and not as an arbitrator;
- ii. proceed in any manner he or she thinks fit;
- iii. conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- iv. examine such documents, and interview such persons, as he or she may require; and
- v. make such directions for the conduct of the determination as he or she considers necessary.

Unless otherwise agreed between the parties, the expert must notify the parties of their decision within 28 days from the acceptance by the expert their appointment.

Failing any agreement to the contrary by the parties, the costs of expert determination will be shared equally between the parties, and each party will bear its own costs.

## 11.3 Payment Must not be Withheld

No payment by the Scheme Coordinator to the MRF operator shall be withheld on account of a mediation or expert determination except to the extent that such payment is the subject of such dispute.

## 11.4 Repeal of Protocol

The effect of Section 11.1 shall survive in the event that the Protocol is repealed.

# 12. Compliance Audits

An EPA officer may conduct an audit or inspection to determine compliance with the Protocol at any time. The MRF operator must provide all reasonable assistance and facilities required by the EPA officer.