

PROACTIVE RELEASE COVERSHEET

Minister	Hon Rachel Brooking	Portfolio	Environment
Name of package	Waste Minimisation (Information Requirements) and (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 and its minute decision	Date to be published	30/10/2023

List of documents that have been proactively released			
Date	Title	Author	
26 September 2023	Waste Minimisation Amendment Regulations - from CabNet	Ministry for the Environment	
21 September	LEG-23-MIN-0196 Minute - updated version	Cabinet Office	

Information redacted NO

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In Confidence

Office of the Associate Minister for the Environment Chair, Cabinet Business Committee

Waste Minimisation (Information Requirements) and (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023

Proposal

This paper seeks authorisation for submission to the Executive Council of the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 (the Regulations).

Executive Summary

- Improving the quality of waste data is a priority under goal 1 in *Te rautaki para: Waste strategy*, adopted by Cabinet and published in March 2023. The inaugural Emissions Reduction Plan, *Te hau mārohi ki anamata: Towards a productive, sustainable and inclusive economy*, commits to improving information on greenhouse gas emissions from waste disposal, in part through these data reporting requirements.¹
- The Regulations amend two sets of regulations made under the Waste Minimisation Act 2008 (WMA) to improve the quality and availability of waste data. The key changes are:
 - 3.1 requiring waste operators to provide data on which type of activities are generating waste (for example, household, business, construction activities termed 'activity source' data);
 - 3.2 requiring territorial authorities to report on the waste minimisation services they provide, facilities they own or operate, and how they spend levy funds;
 - 3.3 updating the schedule of volume-to-weight conversion factors for facilities that do not have access to a weighbridge.
- 4 The Regulations will commence on 1 July 2024.

¹ Action 15.6.2: Improve information on greenhouse gas emissions from waste disposal. https://environment.govt.nz/assets/publications/Aotearoa-New-Zealands-first-emissions-reduction-plan.pdf

Policy

Background

- Quality waste data is important for designing and evaluating effective waste policy, as well as for compliance monitoring and enforcement. Both domestic² and international³ reports have assessed New Zealand's current waste data as inadequate.
- 6 Commitments in the Emissions Reduction Plan (ERP) published in May 2022 and *Te rautaki para: Waste strategy* require improved tools to gain, manage and disseminate waste data.
- In May 2021, Cabinet approved policy to amend the Waste Minimisation (Information Requirements) Regulations 2021⁴ and the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009⁵, to improve the quality and availability of waste data by [ENV-21-MIN-0018 refers]:
 - 7.1 requiring operators of class 1 municipal landfills, class 2 construction and demolition fills, class 3 managed fills, class 4 controlled fills, class 5 cleanfills and industrial monofills to keep, and to provide to the Secretary for the Environment (the Secretary), information on the activity source of waste received at and diverted from the site;
 - 7.2 requiring operators of transfer stations to keep, and to provide to the Secretary, information on the activity source of waste received at the site, reused or recycled at the site, and sent from the site to a disposal facility;
 - 7.3 requiring territorial authorities to keep, and provide to the Secretary, information on:
 - 7.3.1 their spending of waste levy money:
 - 7.3.2 their performance in achieving waste minimisation with the services, facilities and activities provided or funded in accordance with their Waste Management and Minimisation Plan:

² Parliamentary Commissioner for the Environment, 2019, "Focusing Aotearoa New Zealand's environmental reporting system"; Parliamentary Commissioner for the Environment 2019, "A review of the funding and prioritisation of environmental research in New Zealand"; Climate Change Commission 2021, "Ināia tonu nei: a low emissions future for Aotearoa"; Parliamentary Commissioner for the Environment 2006, "Changing behaviour: Economic instruments in the management of waste".

³ New Zealand's waste data is assessed as being poor or having gaps in the UN Country Profile; in OECD Environmental Performance Reviews: New Zealand 2017.

⁴ The Waste Minimisation (Information Requirements) Regulations 2021 require operators of some sites to measure, keep record of, and report, waste materials at their site.

⁵ The Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 require the payment of the waste disposal levy (including provisions for how the levy is to be paid and the types of facilities subject to the levy), the measurement of gross and diverted tonnages by sites subject to the levy, and records and information requirements for disposal facilities.

7.3.3 their performance against standards for implementation of their Waste Management and Minimisation Plans, if a performance standard applies to the territorial authority.

Use of data

- The aim of activity source reporting is to understand the types of activities that are generating different volumes of waste in New Zealand. Activity source data will be combined with waste composition surveys to give the Ministry for the Environment (MfE) a baseline understanding of the composition of loads from activities. This collection of data will enable MfE to use activity source reporting as a proxy for full composition surveys. This is important because composition surveys are onerous and can be expensive.
- The information gathered from activity source reporting combined with waste composition surveys will be used to plan interventions such as infrastructure placement and focus (e.g., resource recovery facilities for particular waste streams may be located in areas where a particular activity source category is highly represented) and regulation (e.g., waste streams highly represented may result in increasing regulation for that material, as is being considered for organic waste under the first ERP⁶).
- Mandatory reporting for territorial authorities, such as on waste levy spend, will allow for a more robust representation of how this hypothecated portion of the waste disposal levy is contributing to waste minimisation. Territorial authority reporting on waste levy spend is currently limited and voluntary, which affects MfE's ability to audit outcomes.
- 11 MfE will also use data collected through territorial authority mandatory reporting to assess progress against performance standards to be introduced through the transforming kerbside work programme. In November 2022, Cabinet agreed for performance standards to be set under s49 of the WMA to establish the standard materials to be collected in kerbside services and divert 50 percent of kerbside waste to dry and food waste recycling by 2030 [CAB-22-MIN-05398 refers].

Decisions made on technical aspects of the Regulations

- Cabinet authorised the Minister for the Environment to make final policy decisions and drafting changes in relation to [ENV-21-MIN-0018 paragraph 2 refers]:
 - 12.1 categories of activity source data for sites required to report data to the Secretary;

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⁶ Action 15.4: Investigate banning organic waste from landfill by 2030. https://environment.govt.nz/assets/publications/Aotearoa-New-Zealands-first-emissions-reduction-plan.pdf

- 12.2 the types of information required to be kept and reported for site operators and territorial authorities, and the frequency of activity source reporting from site operators to the Secretary;
- 12.3 methods by which landfill sites and transfer stations can measure and report their quantities of waste.
- Cabinet also authorised the Minister to make further decisions on minor and technical matters in line with the policy decisions agreed by Cabinet [ENV-21-MIN-0018 paragraph 4 refers].

Activity source categories for mandatory reporting by landfills and transfer stations

- The Regulations introduce activity source reporting, using seven, readily identifiable categories. The activity source reporting categories have been developed from the New Zealand Waste Data Framework⁷ in consultation with site operators and align with those typically used internationally.
- 15 The frequency of activity source reporting from site operators to the Secretary for the Environment will be monthly (unless the Secretary has given approval for an annual return to be provided for the financial year). This is consistent with current reporting frequency by operators under the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009.

Activity source reporting should only apply to waste received at the site

- 16 Cabinet agreed that regulations would require landfill operators to report information on the activity source of waste received at and diverted from the site [ENV-21-MIN-0018 paragraph 1.1 refers]. Cabinet also agreed that transfer station operators would be required to report information on the activity source of waste received at the site, reused or recycled at the site, and sent from the site to a disposal facility [ENV-21-MIN-0018 paragraph 1.2 refers].
- During investigations into what activity source data could be collected by site operators, MfE identified that it is operationally not practical to assign individual activity categories to loads of materials after it enters the site. This is because material is stockpiled from multiple activity sources until a sufficient quantity has been collected, before it is sent offsite for recycling or reuse, i.e., an individual load of diverted material is likely to have multiple activity sources. Similarly, in practice, transfer stations do not reuse or recycle material, and can only record activity source information related to waste entering the site.
- I therefore recommend that the Regulations should not require activity source reporting for waste diverted from a site or reused or recycled at a transfer station. Vehicles bringing waste to a transfer station or landfill have material weighed on entry (to determine fees) and this is the most practical place to record the activity source of the waste.

⁷ The New Zealand Waste Data Framework is a widely accepted guidance document across the waste industry in New Zealand.

Mandatory reporting by territorial authorities

- The Regulations introduce requirements for territorial authorities to keep records and report annually on their waste minimisation activities and levy spending. The reporting requirements build on existing voluntary reporting by territorial authorities and include information on:
 - 19.1 the type and volume of material collected for recycling and refuse;
 - 19.2 the contamination rate for kerbside recycling and refuse collections;
 - 19.3 facilities that are owned or operated by each council;
 - 19.4 how levy funds have been spent.
- The intention of the Regulations is not to introduce new actions or programmes not committed to under territorial authorities' Waste Management and Minimisation Plans (WMMPs). In preparing these proposals, all existing WMMPs were reviewed in 2021 to assess the common commitments made across plans.
- 21 Mandatory reporting by territorial authorities does not include reporting on resource recovery facilities that are not owned or operated by the territorial authority themselves. This is because:
 - 21.1 many facilities that handle or process materials for a territorial authority (including materials from kerbside collection services) also accept materials from other territorial authorities, individuals or organisations, and can therefore not clearly attribute outputs to a particular council;
 - 21.2 industry has expressed concern about sharing commercially sensitive information with territorial authorities because they are often considered competitors to the private waste sector.
- The materials collected by kerbside services, and the level of contamination in those collections, will be recorded by the territorial authority. This constitutes the "input" material for a resource recovery facility. The data that will not be mandated for collection through these regulations is the "output" of private facilities utilised by territorial authorities.

Methods for measuring quantities of waste

- Volume-to-weight conversion factors enable reporting from sites that do not have access to a weighbridge. Conversion factors are based on the type of waste being accepted.
- 24 MfE has worked with the waste sector to refine the current volume-to-weight conversion factor schedule, including clarifying the existing four load types and adding four new load types.
- The Regulations will provide those sites using conversion factors more clarity on the appropriate conversion factor to apply. The improvements made to the

schedule will better reflect the types of materials being accepted at Class 2-5 sites and transfer stations, as well as Class 1 municipal landfills.

Implementation

- Implementation of the Regulations will be supported by the following guidance and reporting software updates:
 - 26.1 an update to the Waste Management Institute of New Zealand (WasteMINZ⁸)-led National Waste Data Framework, which provides guidance for waste management facility operators and territorial authorities on how to gather and report waste data that will meet reporting requirements;
 - 26.2 an update to Solid Waste Analysis Protocols, which provide the preferred methodology for measurement under the Regulations;
 - 26.3 changes to MfE systems to support collection, retention and analysis of territorial authority and private waste company data.

Timing and 28-day rule

Notice of the Regulations will be published in the Gazette the week they are made by the Governor-General in Executive Council. The Regulations will commence on 1 July 2024. A longer lead-in has been provided to recognise the impact of the severe weather events of 2023.

Compliance

- 28 The Regulations comply with:
 - 28.1 the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 28.3 the principles and guidelines set out in the Privacy Act 2020;
 - 28.4 relevant international standards and obligations;
 - 28.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites have been met

- Before recommending the making of regulations under the WMA ss 86(1) and 41(1) the Minister must:
 - 29.1 obtain and consider the advice of the Waste Advisory Board (ss 86(2) (a) and 41(2) (a));

⁸ WasteMINZ is the largest representative body of Aotearoa New Zealand's waste, resource recovery and contaminated land sectors.

- 29.2 be satisfied that there has been adequate consultation with persons or organisations who may be significantly affected by the regulations (ss 86(2)(b) and 41(2)(b));
- 29.3 consider the costs and benefits expected from implementing the regulations (ss 86(2)(c) and 41(2)(c));
- 29.4 before recommending the making of regulations under the WMA s 86(1) consult the Government Statistician (s 86(3)).
- I have obtained and considered the advice of the Waste Advisory Board. The Waste Advisory Board agreed in general with the consultation proposals to improve waste data and made specific recommendations on aspects of territorial authority reporting and activity source data collection, two of which I have supported. These are requiring additional reporting of materials produced at council owned or operated composting and anaerobic digestion facilities; and tonnage of waste received at anaerobic digestion facilities, where available.
- I am satisfied that there has been adequate consultation with persons or organisations who may be significantly affected by the regulations. In addition to public consultation, MfE undertook targeted consultation with representatives of affected regulated parties on an exposure draft of the Regulations.
- I have considered the costs and benefits expected from implementing the Regulations. An expected benefit is better information on the composition of waste and associated emissions from landfills and resource recovery facilities, which will support evidence-based policy and decision making. Mandatory reporting for territorial authorities, such as on waste levy spend, will allow for a more robust representation of how this hypothecated proportion of the waste disposal levy is contributing to waste minimisation.
- The costs to site operators of expanded waste data reporting will be influenced by a range of factors including what data reporting systems they already have in place, and what resource is available to them to implement new data collection procedures. Costs may include:
 - 33.1 upgrading an existing weighbridge (either using paper/analogue tracking or with existing digital hardware) to use software for tracking waste activity source. Estimates provided to MfE indicate new software may cost approximately \$8,000-\$15,000, depending on existing infrastructure;
 - 33.2 time cost to identify, record, aggregate and then submit data based on the activity source categories;
 - 33.3 staff training to recognise load types for activity source reporting (aided by guidance materials).

- Some operators raised concerns during consultation over the costs of implementing activity source categories for non-municipal classes of landfill (e.g., Class 2 5). Officials note that the application of activity categories for these sites should be a less complex exercise because fewer categories will apply to the materials that they accept and dispose of.
- The intention is for reporting platforms to be available for users to familiarise themselves with in advance of obligations coming into effect. Support will be provided through guidance (as outlined in the "Implementation" section above) and an educational approach to compliance will be taken where appropriate for the first year of the Regulations coming into effect.
- The cost to territorial authorities is expected to be low. While there may be an initial cost to change processes, all territorial authorities currently report voluntarily through MfE's reporting platform for territorial authorities.
- MfE will incur costs for the development and operation of web-based reporting infrastructure, guidance provided to the regulated community, and an expansion of compliance resource to monitor incoming reporting. Costs will be met within MfE's baseline funding.
- I have consulted the Government Statistician. The Government Statistician was supportive of the proposals to improve the overall quality and availability of waste data.

Regulations Review Committee

In my opinion, there are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

The Regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval was sought on the policy relating to the Regulations [ENV-21-MIN-0018 refers].

Publicity

The Regulations will be notified in the Gazette. MfE intends to notify stakeholders when the Regulations have been made.

Proactive release

This paper will be proactively released (subject to redaction as appropriate under the Official Information Act 1982) within 30 business days of decisions being confirmed by Cabinet.

Consultation

- Public consultation on improvements to waste data took place between November 2019 and February 2020, as part of consultation on the expansion and increase of the waste disposal levy. Submitters were broadly in support of improving the availability of waste data.
- Ongoing engagement occurred with a small number of disposal facility operators, territorial authorities, and two waste sector consultants during the preparation of the Regulations, and this input informed some improvements from a workability perspective.
- The following agencies were consulted on the detailed proposals reflected in the Regulations: The Treasury, Environmental Protection Authority, Ministry for Primary Industries, Ministry of Business, Innovation and Employment, Te Puni Kōkiri, Ministry for Pacific Peoples, Department of Conservation, Inland Revenue, Ministry of Foreign Affairs and Trade, Ministry of Transport, Waka Kotahi, Department of Internal Affairs, Statistics NZ, Parliamentary Counsel Office, and the Office of the Privacy Commissioner.
- The Department of Prime Minister and Cabinet was informed.
- The Waste Advisory Board and the Government Statistician were consulted on detailed proposals reflected in the Regulations.

Recommendations

I recommend that the Cabinet Business Committee:

- note that on 20 May 2021 the Cabinet Environment, Energy and Climate Committee agreed that regulations be developed to require waste operators to provide better data on which activities are generating waste and to require territorial authorities to report on how they spend levy funds and provide waste minimisation services and facilities [ENV-21-MIN-0018 refers];
- 2 note that Cabinet authorised the Minister for the Environment to make final policy decisions and drafting changes in relation to [ENV-21-MIN-0018 paragraph 2 refers]:
 - 2.1 categories of activity source data for sites required to report data to the Secretary for the Environment;
 - 2.2 the types of information required to be kept and reported for site operators and territorial authorities, and the frequency of activity source reporting from site operators to the Secretary for the Environment;

- 2.3 methods by which landfill sites and transfer stations can measure and report their quantities of waste.
- note that Cabinet agreed the regulations would require landfill operators to report information on the activity source of waste received at and diverted from the site, and transfer station operators to report activity source information on waste received at the site, reused or recycled at the site, and sent from the site to a disposal facility [ENV-21-MIN-0018 paragraphs 1.1 and 1.2 refer];
- 4 **note** that further investigations by officials found that it is operationally not practical to assign individual activity categories to loads of materials diverted or sent from landfills and transfer stations due to the process of stockpiling, and that in practice, transfer stations do not reuse or recycle material on site;
- **agree** to recommend that Cabinet rescind the decisions referred to in recommendation 3;
- agree that the Regulations require operators of class 1 municipal landfills, class 2 construction and demolition fills, class 3 managed fills, class 4 controlled fills, class 5 cleanfills, industrial monofills and transfer stations, to keep, and to provide to the Secretary for the Environment, information on the activity source of waste that enters the site;
- 7 note that the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 will give effect to the decisions referred to in paragraphs 1 and 2 above, and paragraph 6 subject to Cabinet's decision;
- 8 **note** that ss 41(2), 86(2) and 86(3) of the Waste Minimisation Act 2008 require that before recommending the making of an Order in Council under s 86(1) the responsible Minister must:
 - 8.1 obtain and consider the advice of the Waste Advisory Board (s 86(2) (a));
 - 8.2 be satisfied that there has been adequate consultation with persons or organisations who may be significantly affected by the regulations (s 86(2)(b));
 - 8.3 consider the costs and benefits expected from implementing the regulations (s 86(2)(c));
 - 8.4 consult the Government Statistician (s 86(3));
- 9 **note** the advice of the Associate Minister for the Environment that the requirements described in paragraph 8 above have been met;
- authorise the submission to the Executive Council of the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and Waste

Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023;

11 **note** that the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 come into force on 1 July 2024.

Authorised for lodgement

Hon Rachel Brooking
Associate Minister for the Environment



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Waste Minimisation Amendment Regulations

Portfolio Associate Environment (Hon Rachel Brooking)

On 18 September 2023, the Cabinet Legislation Committee, having been authorised by Cabinet to have Power to Act [CAB-23-MIN-0446]:

- noted that on 20 May 2021, the Cabinet Environment, Energy and Climate Committee (ENV) agreed that regulations be developed to require waste operators to provide better data on which activities are generating waste and to require territorial authorities to report on how they spend levy funds and provide waste minimisation services and facilities [ENV-21-MIN-0018];
- **noted** that ENV authorised the Minister for the Environment to make final policy decisions and drafting changes in relation to [ENV-21-MIN-0018 paragraph 2]:
 - 2.1 categories of activity source data for sites required to report data to the Secretary for the Environment;
 - 2.2 the types of information required to be kept and reported for site operators and territorial authorities, and the frequency of activity source reporting from site operators to the Secretary for the Environment;
 - 2.3 methods by which landfill sites and transfer stations can measure and report their quantities of waste;
- noted that on 24 May 2021, Cabinet agreed that the regulations would require landfill operators to report information on the activity source of waste received at and diverted from the site, and transfer station operators to report activity source information on waste received at the site, reused or recycled at the site, and sent from the site to a disposal facility [ENV-21-MIN-0018 paragraphs 1.1 and 1.2];
- 4 **noted** that further investigations by officials found that it is operationally not practical to assign individual activity categories to loads of materials diverted or sent from landfills and transfer stations due to the process of stockpiling, and that in practice, transfer stations do not reuse or recycle material on site;

- 5 **agreed** to recommend that Cabinet:
 - 5.1 rescind the decision referred to in paragraph 3 above; and instead
 - 5.2 agree that the Regulations require operators of class 1 municipal landfills, class 2 construction and demolition fills, class 3 managed fills, class 4 controlled fills, class 5 cleanfills, industrial monofills and transfer stations, to keep, and to provide to the Secretary for the Environment, information on the activity source of waste that enters the site:
- noted that the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and Waste Minimisation (Calculation and Payment of Waste Disposal Levy)

 Amendment Regulations 2023 will give effect to the decisions referred to in paragraphs 1 and 2 above, and paragraph 5.2 subject to Cabinet's decision;
- 7 **noted** that ss 41(2), 86(2) and 86(3) of the Waste Minimisation Act 2008 require that before recommending the making of an Order in Council under s 86(1) the Minister must:
 - 7.1 obtain and consider the advice of the Waste Advisory Board (s 86(2)(a));
 - be satisfied that there has been adequate consultation with persons or organisations who may be significantly affected by the regulations (s 86(2)(b));
 - 7.3 consider the costs and benefits expected from implementing the regulations (s 86(2) (c));
 - 7.4 consult the Government Statistician (s 86(3));
- **noted** the advice of the Associate Minister for the Environment that the requirements described in paragraph 7 above have been met;
- authorised the submission to the Executive Council of the:
 - 9.1 Waste Minimisation (Information Requirements) Amendment Regulations 2023 [PCO 23421/12.0] and;
 - 9.2 Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 [PCO 25039/12.0];
- noted that the Waste Minimisation (Information Requirements) Amendment Regulations 2023 and the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2023 come into force on 1 July 2024.

Sam Moffett Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Damien O'Connor
Hon Andrew Little
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Willow-Jean Prime
Hon Rachel Brooking
Hon James Shaw
Tangi Utikere, MP

Officials present from:

Office of the Prime Minister Officials Committee for LEG