

1 April 2009

Mr Garrett Hall
Project Manager – Prescribed Waste
Environmental Strategies Unit
EPA Victoria
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Dear Garrett

The Australian Environment Business Network (AEBN) welcomes the opportunity to comment on the Victorian Government's Exposure Draft ***Environment Protection (Industrial Waste Resource) Regulations***.

The Australian Environment Business Network (AEBN) is Australia's environment industry representative body with over 500 members, from manufacturing services and local government sectors.

In principle, AEBN is very supportive of the general thrust of the proposed changes to the Regulations. AEBN believes that the Regulations proposed in the Exposure Draft provide a reasonable balance between protection of the environment and business flexibility. We acknowledge and support the removal of requirement to submit annual returns.

While supportive of the general philosophy of the draft, AEBN has identified, in the Exposure Draft, some issues which need to be addressed.

These issues are:

1. Clarification of existing definitions and some additional definitions are required;
2. The need for employing environmental auditors or consultants;
3. The lack of appeal rights relating to an EPA ruling
4. Some clarification of items listed under Schedule 1 – Non-Prescribed Industrial Waste would be useful;
5. Reporting of spills and leaks;
6. The Draft is very solid-waste focused. Handling of liquids is not clear;
7. De-regulation of waste transport may lead to increasing risk;
8. The Regulations impose much greater responsibility on industry, shifting it away from EPA.

Specific Comments on the proposed draft

1. Definitions

AEBN believes the Draft would be improved by including or clarifying several definitions, such as -

- **“Highway”** – the term is not immediately clear. Perhaps the Dangerous Goods Regulations or the Road Management Act could provide a better term;
- **“Prescribed Industrial Waste (PIW)”** – this definition is not clear at all. It appears to say that all industrial waste is Prescribed Industrial Waste;

Q. Will there be a more useable definition in the planned combined guidelines?

- **“treatment”** – this definition could be expanded, perhaps including example(s). VCAT has considered this definition;
- **“reprocessing”** - could also be expanded, perhaps including example(s).

In general, AEBN recommends every possible effort is made to harmonise definitions with those used in other States and other legislation.

2. Auditor/Consultant

AEBN must decry the additional impost on industry in requiring 3rd party certification at Environment Auditor or Consultant level. Quite clearly, this is a new set of expensive rules, albeit with some minor savings on industry, but, in reality, shifting responsibility from EPA to industry. AEBN has long called for restrictions on waste generators, transporters and treaters to be eased, to allow better reporting and administrative efficiency, but would definitely like to see quality standards maintained, for collection, transport, treatment and disposal. Employing an environmental auditor or a consultant to prepare information for EPA will incur cost and time for every application. In most cases, the expertise about a waste lies within the waste generator’s personnel. Suitably qualified individuals should be able to put forward a notification, not necessarily an Auditor or consultant.

3. Right of appeal

Not having a right of appeal to, say, VCAT, against decisions and conditions seems most unjust, especially as the applicant will almost certainly have greater, first-hand, knowledge (than EPA personnel) of the materials and processes involved. This right of appeal has always been a part of most EPA decision making powers including Works Approval, Licence amendment and Pollution Abatement Notice decisions.

4. Clarification of Schedule 1: non PIW

The exemption list detailed in Schedule 1 is very broad, e.g. “bricks”. The definitions in this area need to be lightened up significantly. As well, there is confusion regarding the intended means of considering minor contamination, e.g. residues in an IBC or bulker bag?

5. Reporting spills/leaks

Clarification is required here. There should be more detail of:

- When is a spill to report necessary, e.g. if fully contained onsite no report should be necessary. The spill report requirement should be restricted to instances where the spill occurs on a public road or where pollution is likely to occur.
- How to report a spill (telephone, email?)
- When to report a spill? (Threshold quantities?)

6. Liquid waste

The draft Regulations strongly emphasise solid waste. Due consideration should be given to whether the draft adequately covers liquid waste.

7. De-regulation of transport: increased risk of abuse

The EPA will need to ensure that unscrupulous generators, transporters and treaters of waste do not enter the market, to the detriment of public safety, and in unfair competition with the good operators under the guise of beneficial reuse and secondary beneficial reuse. Random audits of the waste industry should become a standard feature of EPA operations.

8. Cost and responsibility shift to industry

AEBN does not believe the requirement to have a 3rd party involvement Statutory Auditor or consultant will add value to the process.

The EPA, as the regulator, should be the arbiter to determine whether secondary beneficial uses are acceptable. This responsibility should not be delegated to an auditor. Applications for secondary beneficial reuse should be accepted from waste generators or their agents as well as waste treatment / disposal sites.

The applications should be prepared by suitably qualified persons with no additional cost imposed of having to engage a 3rd party. In many instances 3rd party expertise will be sourced, however this should be at the discretion of the industry, not required by the Regulation. The engagement of a 3rd party will be costly and in many cases will not add value.

Other Issues

9. 28 days for EPA to process an Application? There should be no provision for the clock to be stopped and started in this approval process.

10. Contaminated sites. Council responsibility? A number of municipal Councils are aware that they may have some contaminated sites in their area, e.g. parks, reserves, etc. AEBN believes EPA should encourage and assist Councils to identify, map and manage such sites.

11. Interstate treatment/reuse Material being transported interstate for direct or secondary beneficial reuse may become liable to that other State's waste transport regulations at the Victorian border. The EPA must ensure that the waste classifications and the classification of material intended for direct beneficial reuse, and therefore not a waste, is recognised in other jurisdictions so confusion and duplication is minimised.

12. Gazettal of Exemptions and reuses There appears to be no provision to publicise these. AEBN recommends that these be listed (and indexed appropriately) on the EPA website, to assist all industries to become aware of what is possible and acceptable to EPA.

Should you require further detail or explanation regarding this submission, please contact the Australian Environment Business Network (AEBN) National Head Office on (03) 9397 2511 or at tina@aebn.com.au

Yours sincerely

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