

SUMMARY OF PROPOSED AMENDMENTS TO **ENVIRONMENT PROTECTION LAWS**

The Protection of the Environment Operations Act 1997 has been in force for just over 2 year. There are several minor improvements that the EPA considers could be made to the Act in light of its experience of administering it over that period. The EPA proposes to recommend to the Government that a Bill making the changes be introduced into Parliament in the Spring 2001 session. The Bill would also include a few minor amendments to some other environment protection laws.

This document summarises the proposed changes. Further detail about the main changes is in Attachment 2.

MAIN AMENDMENTS

Protection of the Environment Operations Act 1997

- No. 1** Make it an offence to falsely represent that services are endorsed or provided by the EPA.
- No. 2** Provide for the owner of a noisy vehicle (including one with a noisy sound system) generally to be liable for the "offensive noise" offence. However, the owner will not be liable if the owner was not in charge of the vehicle at the time and nominates the person who was in charge or satisfies the authorities that the owner does not know who was in charge. The person who was in charge will also be liable for the offence.
- No. 3** An equivalent amendment to No.2 but in relation to noisy vessels.
- No. 4** Enable a licensee's notification to the EPA of a pollution incident to be used as evidence in the prosecution of the licensee if the notification was required under a licence condition.
- No. 5** Ensure that, under a search warrant, an authorised officer can enter and search premises where evidence of an offence is located, although the offence may have been committed elsewhere.
- No. 6** Enable all people who are authorised to issue penalty notices for offences to be given powers under the Act to investigate those offences so that they have adequate information to decide whether to:
 - (a) issue a penalty notice; or
 - (b) prosecute where the notice recipient elects to have the matter dealt with in court.
- No. 7** Make the owner of a vehicle emitting excessive smoke liable for the "smoky vehicle" offence unless the owner can prove that the owner did not cause or allow the vehicle to be used when it was emitting the smoke.

OTHER AMENDMENTS

Protection of the Environment Operations Act 1997

These amendments to the Act will:

- (a) clarify and fill gaps in the existing provision (section 109A) which validates regulatory action taken under the Act by a regulatory authority (eg a local council) in the mistaken but reasonable belief that it was the appropriate regulatory authority for an activity;
- (b) ensure that a local council and its staff (and not just the EPA and its staff) have sufficient powers of investigation to be able to determine whether the council is the appropriate regulatory authority for an activity or incident;
- (c) make it clear that a Council can bring proceedings in the Land and Environment Court for an offence against the Act (and regulations made under it) if the Court grants the Council leave to do so;
- (d) eliminate the differentiation in section 120 between the offences of polluting waters, causing waters to be polluted and permitting waters to be polluted;
- (e) ensure that a licence application cannot be deemed to have been refused until the EPA has had time to consider any submissions which it is required by law to invite in relation to the application and any necessary development consent has been granted;
- (f) ensure that the provision of false or misleading information in a licence surrender application is an offence, in the same way that the provision of this sort of information is an offence where other types of applications are concerned;
- (g) incorporate the air pollution regulation-making powers from laws repealed by the Act rather than relying on transitional provisions in Schedule 5 of the Act to make these powers available;
- (h) change one of the two limbs of the definition of when a vehicle "emits excessive air impurities" (ie section 154(a)) so that it does not require the observation of emissions coming from a specific point;
- (i) change the term that is used to refer to people who are authorised to issue penalty notices (as referred to in section 226) to make it clear that they are not necessarily "authorised officers" appointed under section 187 of the Act and therefore do not necessarily have the powers which only a section 187 authorised officer can exercise;
- (j) ensure that where a notice under the Act requires something to be done by a certain date and that date passes without it being done the offence of failing to comply with the notice is a continuing offence; and
- (k) ensure that regulations made under the Act can:
 - provide defences to offences in the regulations;
 - impose conditions on licences (conditions can already be imposed by regulation to give effect to a tradeable emission scheme); and

- allow Schedules such as the Protection of the Environment Operations (Control of Burning) Regulation 2000 Schedules* to be amended by Gazette notice.

*Clauses of this Regulation prohibit certain types of burning. The Schedules to the Regulation list the local government areas in which the prohibitions apply.

Contaminated Land Management Act 1997

An amendment to this Act will:

- (l) give the EPA a discretion to grant up to 2 years' accreditation under the Act to appropriate contaminated site auditors, instead of accreditation having to be for one year at a time.

Pesticides Act 1999

An amendment to this Act will:

- (m) ensure that the Act's regulations can provide defences to offences in the regulations.

Radiation Control Act 1990

The amendments to this Act will:

- (n) provide inspectors under the Act with modernised powers similar to those given to authorised officers under Chapter 7 of the *Protection of the Environment Operations Act 1997*;
- (o) enable radiation apparatus and radioactive substances to be sold to a person who holds a licence under the Act to *possess* the particular item, not just (as at present) to a person who holds a licence to *use or sell* the item;
- (p) provide that a person's accreditation as a radiation expert remains in force for the term specified in the accreditation and is to be renewed, on the person's application, for a period of not less than 12 months (instead of accreditation being, as at present, on-going subject to cancellation or surrender); and
- (q) enable penalty notices to be issued for some offences under the Act and its regulations.

Road and Rail Transport (Dangerous Goods) Act 1997

An amendment to this Act will:

- (r) ensure that the investigatory powers of an authorised officer under the Act can be used to find out whether the Act has been or is being complied with. Currently they can only be used to find out whether the Act *is being* complied with.

