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mark.gorta@environment.nsw.gov.au

Mark Gorta
Manager Waste Management
Department of Environment and Climate Change
PO Box 290A
SYDNEY SOUTH NSW 1232

Dear Mark

RE: ISSUES WITH THE NEW WASTE CLASSIFICATION GUIDELINES

The Australian Environment Business Network (AEBN) supports and welcomes the changes to the classification and licensing requirements for waste management across NSW. The Waste Management Section of the Department has done a good job of simplifying the classification of wastes. As with any complex regulatory change there will be some minor issues to correct or just clarify the meaning of the intent of the requirements. This is perhaps one of a number of responses to the changes to the waste reforms that identify these minor issues and recommended improvements to clarify the meaning and intent of the reforms.

AEBN notes that in many Department of Environment and Climate Change (DECC) regulations and supporting documents much is subject to interpretation and discretion. When dealing with the DECC this is not a problem as much of its discretionary interpretation is understood by many especially in the waste industry.

For example, the triggers for tracking wastes are based on the vague NEPM list. However, there is an understanding with DECC that use of tracking would not include wastes going to general waste landfills even though many of these wastes could be interpreted to trigger the tracking requirements.

Increasingly companies are also having to comply with their environmental management systems requirements. This puts the interpretation of environmental laws, policies and supporting documents in the hands of auditors. AEBN has on a number of occasions had members complain about over zealous auditors, even refusing to accept DECC interpretation of its laws it must enforce. Hence many experience unjust non-conformances. While companies can change auditors, it can appear as a questionable action on behalf of the company trying to maintain a good environmental image.

This problem is not limited to the Waste Management Section nor just the DECC. However, it does mean that there is an increasing requirement for regulators to be more specific with regulations and supporting documentation. This submission identified a number of areas where such clarification and detailing is required.

AEBN has identified a number of issues to improve the clarity of the DECC's new *Waste Classification Guidelines Part 1*. These include:

- Need for Testing of all Chemical Assessment species:
- Pre-Assessment of Hazardous Wastes
- Typo in Table 3

1. NEED FOR TESTING OF ALL CHEMICAL ASSESSMENT SPECIES

AEBN is aware there is some misinterpretation of the way in which the *Waste Classification Guidelines* work in relation to chemical assessment. This issue was also present with the old Guidelines as well.

The *Waste Classification Guidelines* state on page 23:

It may not be necessary to chemically assess a waste if the waste generator knows the process(es) that led to the production of the waste and the maximum possible levels of contaminants it contains, and is certain that the waste can be classified without SCC and/or TCLP testing.

This is and has been interpreted to mean:

- a) That the complete list of TCLP and SCC testing does not have to be undertaken if the generator is confident (perhaps using a written justification) that its waste does not contain certain chemical substances based on the knowledge of processes which lead to the waste's generation.
- b) In certain circumstances the generator may not undertake any chemical assessment testing based on the wastes generational history.

Interpretation (a) has been not been construed by some companies, under both the old and new Guidelines, as the guidelines do not specifically specify that partial testing is also permitted. Though such meaning has always been used by most in industry and DECC. Consequently, AEBN has a few members who are rather diligent and routinely test for all 60+ chemical species. Such actions, while overly cautious, have never been considered necessary since the old waste guidelines were first introduced in 1996. Nevertheless, to better communicate that some assessment is required but that excessive assessment is unnecessary further explanation is required under the *Waste Classification Guidelines*.

Meaning (b) becomes a non-option as the *Waste Assessment Guidelines* state:

Step 5 Determining a waste's classification using chemical assessment (page 10)

'Where a waste producer does not wish to undertake this assessment, the waste must be managed as if it were hazardous waste. Note that hazardous waste cannot be disposed of and must be treated.' and

Step 6 Is the waste putrescible? (page 21)

Where a waste producer does not wish to undertake this test, the waste must be treated as general solid waste (putrescible).

For Step 5, avoiding the undertaking of any chemical assessment is not one to be taken lightly and AEBN understands why DECC used the automatic assessment of such wastes. But is this being too restrictive?

AEBN considers that an alternative approach be considered. If a waste generator wishes to so classify its wastes, which progresses to Step 5 without any chemical assessment, then the generator must demonstrate by a written justification that the processes which led to the generation of such wastes does not warrant any chemical assessment.

R1 AEBN recommends replacing the sentences '*Where a waste producer does not wish to undertake this assessment, the waste must be managed as if it were hazardous waste. Note that hazardous waste cannot be disposed of and must be treated.*' From step 5 with:

'Where a waste producer does not wish to undertake this assessment, the waste must be managed as if it were hazardous waste unless the producer can demonstrate by a written justification that it is based on the processes which lead to the generation of the waste that the waste does not contain significant amounts¹ any of the substances listed in Step 5 and Step 6.'

For Step 6 AEBN considers automatic classification as a putrescible waste without testing as unreasonable. The putrescible tests should be considered as just another set of tests listed under Step 5. If the generational history of the waste can be used to avoid undertaking many of the TCLP and SCC substances why cannot the putrescible tests also be treated in a similar fashion?

AEBN has also been informed from our members that the testing required for putrescible waste is uncommon, with many laboratories not equipped to undertake such analysis.

R2 AEBN recommends removing the sentence *Where a waste producer does not wish to undertake this test, the waste must be treated as general solid waste (putrescible) from step 6.*

To better clarify the need for chemical assessment, the statement at the end of *Appendix 1 Chemical Assessment* should be re-written and an example or 2 added.

R3 AEBN recommends replacing the text of "*Is Chemical Assessment Necessary*" with :
It may not be necessary to chemically assess a waste for all or any specific substances if the waste generator knows the process(es) that led to the production of the waste and the maximum possible levels of contaminants it contains, and is certain that the waste can be classified without SCC and/or TCLP and/or putrescible testing.

Where the generator has opted to chemically assess for limited set of specific substances (including no testing required) a written justification identifying the processes which lead to the production of the waste should be undertaken to determine those chemical assessments which are required for assessment.

For example, chrome plating works

A chrome plating works generates a solid waste from the rinse waters between each plating and treatment bath. Solids are precipitated out of the rinse waters using various alkalis. The specific

¹ Significant amounts could be defined as being less than the CT test limits or 1/10 of SCC limits and will not exceed the putrescible test limits.

substances to be tested for are based on the processes which generated that waste—chrome plating which is 3 part process of copper, nickel and then chrome plating. An assessment of chemicals used and not used have been considered for this waste and include:

Included substances for chemical assessment

- *Cr, Ni, Cu will be tested for as they are used in large amounts in the process*
- *Cyanide, Cd and Ag have been used in the past and will be tested for—unsure of concentrations which may be found due to past use of these chemicals.*

Excluded substances for chemical assessment

- *Organic and Chlorinated Solvents are not used (includes historical use on site)*
- *Scheduled chemicals and Pesticides are not included as they are not used*
- *C6-C36 hydrocarbons are used but in very small quantities that would be far less (e.g. < 1/10) than the SCC limits*
- *Plasticizer chemicals are not used*
- *As, F, Pb, Hg, Mo & Be are not used*
- *Putrescible as the waste contains no food based or putrescible materials*

2 PRE-ASSESSMENT OF HAZARDOUS WASTES

The list of pre-assessment of Hazardous Wastes contains some minor inconsistencies.

- Use of the pH range for determining if it is a hazardous waste is inconsistent with the Australian Dangerous Goods Code 7th edition (ADG7). ADG7 states:

In the absence of corrosive test data, liquid waste substances that have a pH less than 2.0 or greater than 12.5 should be assigned to packing group II.

Under Step 3 this means that if a waste is analysed and determined not to be a Class 8 Dangerous Good by tissue and metal corrosion tests but still has a pH <2 or a pH >12.5 it would be considered by the current Step 3 to be pre-classified as hazardous waste. As consequence some wastes will not meet Step 4 but will nevertheless be classed as a hazardous waste. This was not the condition under the old Waste Guidelines as they referred to the ADG Code.

R4 ***AEBN recommends that the first dot point under Step 3 be amended to include “unless the waste has been tested in accordance with the procedures stipulated in Chapter 2.8 of ADG7 and been found to be non-corrosive.”***

- Use of the broad range of dangerous goods classification of non-cleaned containers is inconsistent with Step 4. From Step 3:

‘containers that have not been cleaned and that contained dangerous goods within the meaning of the Australian Code for the Transport of Dangerous Goods by Road and Rail.’

This provision is too broad as it captures dangerous goods division 6.2 Infectious wastes containers, Class 7 Radioactive containers and Class 9 Miscellaneous containers.

R5 AEBN recommends the above dot point under Step 3 be replaced with: *‘containers that have not been cleaned and that contained specific types of dangerous goods which are identified under “Step 4 Does the waste possess hazardous characteristics?”’*

3 TYP0 IN TABLE 3

In “Table 3 Summary of criteria for chemical assessment to determine waste classification”, under General Solid waste Item 3 in the second column states:

3. TCLP test values \leq TCLP1 and SCC test values $>$ SCC2 and DECC approves immobilisation

AEBN considers that the reference to SCC2 should refer to SCC1.

Should you require to discuss these issues with AEBN please contact me on the below number or via email.

Yours sincerely



ANDREW DOIG
Director
Australian Environment Business Network

Ph 9453 3348
Email andrew@aebn.com.au