Queensland

Environmental Protection Amendment Regulation (No. 1) 2011

Explanatory Notes for SL 2011 No. 46

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection Amendment Regulation (No. 1) 2011.

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The objective of the Regulation is to:

- exclude chemical storage which is carried out as an ancillary activity to asphalt manufacturing and extractive and screening activities from requiring a development approval, while ensuring that existing development approvals can be amended by the administering authority to include conditions for chemical storage;
- provide for the administering authority to authorise release of wastewater directly to unconfined aquifers for petroleum activities

where it will not have an adverse impact on environmental values of groundwater or surface waters; and

- make a minor amendment to the Regulation to correct a cross reference.

Achievement of policy objectives

To achieve the objective, the *Environmental Protection Regulation 2008* is being amended so that deemed approvals for chemical storage can be included in an existing development approval for asphalt manufacturing and extractive and screening activities and to allow the administering authority to authorise the release of wastewater directly to unconfined aquifers for petroleum activities where it will not adversely impact on environmental values of groundwater or surface waters.

Deemed approvals

In 1995, the commencement of the *Environmental Protection Act 1994* introduced a requirement to hold an approval for storage of greater than 10,000 litres of petroleum products in tanks or containers.

The *Environmental Protection (Interim) Regulation 1995* also provided that a person was taken to have approval to carry out the activity if it was carried out or if construction for the activity commenced before commencement of Regulation - hence the term 'deemed' approval. There was no provision for the transfer of approvals to another person.

The interim regulation required an operator to obtain a new approval if the person proposed to alter the facility in a way that would result in an increase of 10% or more of contaminant into the environment.

In October 2004, amendments to the *Environmental Protection Act 1994* meant that deemed approvals continued to have effect as a registration certificate. Operators were required to provide administrative information to the administering authority for the registration certificate to continue to have effect past one year after commencement of the amendments. After the amendments any change to an operation was subject to the material change of use provisions in the *Integrated Planning Act 1998*.

Amendments made to the *Integrated Planning Act 1998* through the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008* introduced a sunset clause for deemed approvals - Operators must

obtain a development permit by 1 January 2011 or commit an offence under the Act. These amendments were carried through to the *Sustainable Planning Act 2009*.

The purpose of the *Environmental Protection Amendment Regulation (No. 1) 2011* (the Amendment Regulation) is to exempt operators with deemed approvals for ERA 8 (chemical storage) from needing to apply for a development approval for ERA 8 where the chemical storage is ancillary to the carrying out of ERA 6 (asphalt manufacturing) or ERA 16 (extractive and screening activities) under an existing development approval, and to make a minor amendment to the *Environmental Protection Regulation 2008* (the Regulation).

Aquifer Injection

Associated water is necessarily brought to the surface from underground aquifers as a by-product of coal-seam gas (CSG) extraction. There are several methods of disposing of this water, one being reinjection to replenish water supply, subject to various water quality requirements for environmental and human health protection.

Injection plays an important role in the adaptive management regime as it provides for the return of CSG water and reduces the risk to aquifers under stress. As part of the implementation of the environmental conditions from State and Federal Government, injection will continue to be a priority.

When deciding whether to grant or refuse an application for an environmental authority for petroleum activities, DERM must comply with any regulatory requirements in the *Environmental Protection Regulation 2008* (EP Reg) (refer section 309Y and 310N).

Section 63 of the EP Reg includes a regulatory requirement that relates to direct release of wastes to groundwater. This section requires that the administering authority must refuse an application if:

a) waste is released to an unconfined aquifer; or

b) the release of the waste is affecting adversely, or may affect adversely, a surface ecological system; or

c) the waste is likely to result in a deterioration in the environmental values of the receiving groundwater.

Whilst CSG water is technically a waste product, it is quite different from underground injection purely as a method of waste disposal for other industrial wastes (e.g. injection of sewage effluent or hazardous wastes).

Accordingly, there may be circumstances (e.g. if the water is treated) where injection into an unconfined aquifer could be acceptable, so long as appropriate safeguards are in place to ensure that the environment and groundwater values are not affected.

The proposed amendments allow the government to approve injection of waste into an unconfined aquifer when associated with petroleum activities.

Importantly, the existing provisions in Section 63(b) and (c) of the EP Reg will still apply so that any release that may adversely affect a surface ecological system or is likely to result in a deterioration of the receiving groundwater must be refused.

Note the approval of injection will still subject to other regulatory requirements (outside the scope of this particular provision) such as treating contaminants before release, restricting the type or quality of contaminants released and protecting environmental values.

This proposal does not impose any new impacts on industry and will enable the government to make decisions (on a specific and targeted matter) in a more flexible way.

The Amendment Regulation also makes a minor change to section 143 of the Regulation to correct a cross-reference.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objects of the *Environmental Protection Act 1994*, that is, to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (*ecologically sustainable development*).

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation. It provides for ecologically sustainable development, consistent with other State laws relating to impacts on the environment from development.

Benefits and costs of implementation

Implementation will be done within current departmental budgets. Industry has estimated that implementation of the 'deemed approvals' amendments will save the industry at least $2 million.

Consistency with fundamental legislative principles

Section 24(1)(i) of the *Legislative Standards Act 1992* was considered during the drafting of this regulation and this regulation is consistent with fundamental legislative principles. The amendments made by the Amendment Regulation must be in subordinate legislation because the provisions being amended are in subordinate legislation.

Consultation

Consultation was undertaken on the 'deemed approval' amendments with Cement Concrete and Aggregates Australia (CCAA) and the Local Government Association of Queensland via electronic mail and telephone calls. All parties consulted agree with the proposed regulation amendment as reducing red tape whilst maintaining environmental outcomes. The CCAA has estimated that this amendment will save the industry at least $2 million.

Consultation was not undertaken with industry prior to introduction of the aquifer injection amendment. However, industry is aware of existing constraints in the legislation and has been advised that the department is considering arrangements for injection into unconfined aquifers. The LNG Blueprint and the CSG Water Management Policy are both publicly available and clearly state that injection is a preferred method of management for CSG water.

Reasons for non-inclusion of information

This explanatory note includes all of the information required by section 24(4) of the *Legislative Standards Act 1992*.

Notes on provisions

Clause 1 of the Amendment Regulation states the short title.

Clause 2 of the Amendment Regulation states that the Amendment Regulation amends the the Regulation.

Clause 3 of the Amendment Regulation amends section 22A of the Regulation so that, where the ancillary chemical storage is added to an existing development approval for asphalt manufacturing or extractive and screening activities, the administering authority can add, change or cancel existing development conditions to ensure that the chemical storage is managed appropriately. This amendment is consequential to the amendment of Schedule 2 of the Regulation in clause 7 of the Amendment Regulation.

Clause 4 of the Amendment Regulation amends section 63 to insert a new circumstance where the administering authority may grant an application relating to an activity that involves or may involve the release of waste directly to groundwater. This amendment provides that the administering authority may approve an application for an environmental authority for petroleum activities that results in a release of waste to an unconfined aquifer.

This amendment supports the Queensland Government policy position that aquifer injection is a preferred management option for dealing with disposal of water arising from coal-seam gas (CSG) operations. Whilst CSG water is technically a waste product, it has been identified as an emerging resource that can be used in a similar fashion to manage aquifer recharge, provided that appropriate treatment is applied to match the water with the receiving aquifer. This is quite different from injection purely as a method of waste disposal for other industries (e.g. injection of sewage effluent or hazardous wastes). Accordingly, there may be circumstances (e.g. if the water is treated) where injection into an unconfined aquifer could be acceptable so long as appropriate safeguards are in place to ensure that the environment and groundwater values are not affected..

Note that the existing provisions in Section 63(b) and (c) will be maintained thus requiring the administering authority to refuse any application if the release is/may adversely affect a surface ecological system; or is likely to result in a deterioration in the environmental values of the receiving groundwater. This provides the necessary safeguards for the Department of Environment and Resource Management (the department) to make a decision about injection into an unconfined aquifer so long as it does not impact on the environment and groundwater values.

Clause 5 of the Amendment Regulation amends section 143 of the Regulation which exempts certain Aboriginal and Torres Strait Islander Councils from paying fees under the Regulation for a development approval or a registration certificate. Most of the Councils are not listed specifically, but are referred to as "a community government under the *Local Government (Community Government Areas) Act 2004*. This Act was repealed by the *Local Government Act 2009*. The *Local Government Act 2009* now defines these Councils as "indigenous local governments". This clause of the Amendment Regulation corrects the reference.

Clause 6 of the Amendment Regulation inserts a transitional provision which is consequential to the amendment of Schedule 2 of the Regulation in clause 7 of this Amendment Regulation. This section would apply where the administering authority has received, but not yet decided, an application for a development approval for ERA 8 (chemical storage) below the relevant threshold, and the chemical storage is ancillary to an existing development approval for ERA 6 (asphalt manufacturing) or ERA 16 (extractive and screening activities) on the site.

In those circumstances, the applicant will be asked to withdraw their application and their application fees will be refunded. The administering authority can then use the power to amend conditions in section 22A to ensure that the existing development approval is conditioned for the ancillary chemical storage.

Clause 7 of the Amendment Regulation amends ERA 8 (chemical storage) of Schedule 2 of the Regulation so that the definition of chemical storage does not include storing chemicals below the relevant threshold for carrying out an activity under ERA 6 (asphalt manufacturing) or ERA 16 (extractive and screening activities). The relevant threshold is 3(a) of ERA 8, which has no aggregate environmental score (AES). This means that the definition of material change of use in the *Sustainable Planning Act 2009* is not triggered because the chemical storage in those circumstances is not an ERA. Consequently, the operator does not need to apply for a new development approval, but the conditions of the existing development approval for ERA 6 (asphalt manufacturing) or ERA 16 (extractive and screening activities) may be amended to include conditions about the chemical storage (see clause 3 of the Amendment Regulation). This will lessen administrative process and reduce red tape whilst maintaining environmental outcomes.

Clause 8 of the Amendment Regulation inserts a definition of 'dangerous goods' and 'storing'. These terms are used in the deemed approvals amendments and are consequential to clauses 3, 6 and 7.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Environment and Resource Management.