Queensland

Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 196

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2012.

Authorising law

The regulation is made under the head of power contained in section 580—Regulation-making power—of the *Environmental Protection Act 1994*.

Policy objective of the legislation

The primary objective of the legislation is to amendment subordinate legislation-the Environmental Protection Regulation 2008 and the Environmental Protection (Air) Policy 2008.

How the objective will be achieved

The policy objective will be achieved as follows:

Environmental Protection (Air) Policy 2008

The Environmental Protection (Air) Policy 2008 will be amended to address a typographical error in the air quality objectives entry for carbon disulphide.

Schedule 1 currently contains an entry for carbon disulfide that is ten times the actual allowable emission. The amendment corrects this error and provides the appropriate emission level.

Environmental Protection Regulation 2008

Various sections of the Environmental Protection Regulation 2008 are amended by this regulation:

- Section 51 is amended to give effect to Recommendation 7.6 of the Queensland Floods Commission of Inquiry. The Inquiry report stated that the risk of flooding, and its potential effects, should be taken into account in the assessment of environmentally relevant activities. The Commission considered that, to achieve this, a specific direction to consider the risk of flooding should form part of the assessment process under the EP Act.
- Section 122 is amended to give allow for recognition of schemes as a prescribed environmental management system that do not conform to AS/NZS ISO 14001:2004 to allow the operator of an activity to which such a scheme applies to qualify for a 20 per cent fee discount. A new schedule identifies the accredited schemes for this purpose.
- Section 137A is amended to extend the length of time that the holder of two or more environmental authorities for mining activities has to make an amendment application under section 238(2) of the *Environmental Protection Act 1994* for the purposes of receiving a refund of the annual fee. The amendment extends the cut-off date from 2 November 2012 to 31 March 2013.
- Schedule 3, part 1 is amended to include reference to updated versions of codes of environmental compliance for several chapter 4 activities—(ERA 16) and ERA (57), and to include a new code of environmental compliance for certain aspects of sewage treatment (ERA 63).

Consistency with other legislation

This regulation is consistent with the policy objectives of other legislation. The requirement under the *Statutory Instruments Act 1992* in relation to a regulatory assessment statement has been complied with.

Consistency with authorising Act

This regulation is consistent with the *Environmental Protection Act 1994*.

Possible alternative approach

There is no alternative approach. These matters are all established in legislation and legislative amendments are the only option to give effect to the policy objectives.

In relation to the Queensland Floods Commission of Inquiry recommendation 7.6, an alternative approach may have been to rely on the standard criteria as defined in the *Environmental Protection Act 1994*.

All environmentally relevant activities are assessed against the standard criteria in the *Environmental Protection Act 1994*. These standard criteria are wide enough to already consider the risk of flooding in making assessments for environmental decisions.

However, the standard criteria comprise a list of general considerations, such as 'any applicable environmental protection policy'. They do not make reference to the more specific considerations which must be considered when assessing a development application (amongst other things). These more specific considerations are contained in the regulatory requirements in the *Environmental Protection Regulation 2008*. The regulatory requirements have a stronger input into the assessment, since the administering authority **must** comply with the regulatory requirements, but must only consider the standard criteria.

Also, recommendation 7.6 specifically states that the criteria that specifically apply to the assessment of development applications for material change of use for environmentally relevant activities include consideration of the risk of flooding at the site on which the activity is proposed to occur.

Consequently, the best approach to implement recommendation 7.6 is to amend the regulatory requirements contained in section 51 of the *Environmental Protection Regulation 2008.*

In relation to s137A, an extension of the end date for making an amendment application could have been extended by providing advice in this regard to all holders of two or more environmental authorities for mining activities. However, this does not provide certainty for operators that the date for making an amendment application would be extended. Legislative changes are the only way to achieve this.

Consistency with fundamental legislative principles

The amendments are generally consistent with the fundamental legislative principles.

Benefits and costs of implementation

Section 51—Environmental Protection Regulation 2008

Recommendation 7.6 of the Queensland Floods Commission of Inquiry stated that the risk of flooding, and its potential effects, should be taken into account in the assessment of environmentally relevant activities.

Some of the standard criteria in the *Environmental Protection Act 1994* were already wide enough to enable consideration of the likelihood of flooding in making environmental decisions under the Act.

There are no costs to implementation as the existing standard criteria are already wide enough to consider the risk of flooding in making environmental decisions under the *Environmental Protection Act 1994*.

Section 122—Environmental Protection Regulation 2008

The *Environmental Protection Regulation 2008* requires operators of Environmentally Relevant Activities (ERAs) to pay an annual fee. The Regulation also allows for fee discounts where operators can demonstrate excellent environmental performance.

Section 122 of the Regulation currently defines a prescribed EMS as one that a conformity assessment body has certified as conforming to AS/NZS ISO 14001:2004. The only conformity assessment body recognised for the certification of an EMS under this section is the Joint Accreditation System of Australia and New Zealand.

While this serves to set a benchmark to an internationally recognised standard and maintains consistency in assessment and criteria, it is not necessarily tailored to the specific practices of particular industries or sectors. It can also cost significant amounts of money to implement.

This amendment to recognise the National Feedlot Accreditation Scheme (NFAS) as a prescribed EMS will allow the operator of a feedlot access to a 20% annual fee discount if they are accredited under the NFAS. This will remove duplication as under the current framework to be eligible for a fee discount the operator would also have to have in place a prescribed environmental management system.

A number of feedlot operators would be accredited under the NFAS for reasons other than accessing the annual fee discount. Accreditation under the NFAS allows operators access to national and export markets and covers issues such as animal welfare, food safety and product integrity, as well as environmental management.

Currently around 87 per cent of current registration certificate holders are accredited under the NFAS.

There will be no cost to feedlot operators already accredited under the NFAS. If the proposed amendments are made, operators will be eligible for an annual fee discount without the need to undertake additional accreditation under ISO 14001:2004.

If a feedlot operator does not wish to be eligible for the annual fee discount, the amendment places no obligation on them to be accredited under the NFAS or ISO 14001:2004.

Section 137A—Refund of annual fee if environmental authorities amalgamated

Implementation of the extended timeframe provides a benefit to holders of mining activity environmental authorities. It provides more time for environmental authorities to be amalgamated to allow for the annual fee refund.

There is no cost to the holders of these environmental authorities as they are still able to amalgamate their environmental authorities at any time and are not obliged to wait until the extended date to make the application.

Codes of environmental compliance

A Code of Environmental Compliance broadly reduces regulatory burden on operators by replacing the need to submit a development application for an ERA with pre-approved standard conditions for eligible operators.

Code of environmental compliance for certain aspects of environmentally relevant activity (ERA 16)—extraction and screening

Certain quarrying activities are able to be carried out under this Code of Environmental Compliance. Activities that meet the code are then operated under the pre-approved standard conditions set out in the code and are not required to submit a development application for the environmentally relevant activity (ERA).

The current Code does not allow quarry operations within wild river areas or within one kilometre of a sensitive place. These activities could be appropriately managed through pre-approved standard conditions under an amendment to the code.

Implementation of this amendment will result in a significant cost saving to businesses over the next five years due to reduced need to prepare development applications.

This amendment will reduce the unnecessary regulatory burden of development assessment of certain quarry operations which could be appropriately managed through standard conditions under a code. There is also a benefit in that there is a considerable reduction in costs of preparing development applications.

The amendments offer the greatest net benefit to business, the community and government without compromising the risks to the environment from the operation of the activity.

Code of environmental compliance for certain aspects of regulated waste transport – ERA 57

The current Code does not allow tanker to tanker transfer of grease trap and similar wastes. Tanker-to-tanker transfer is often necessary at properties where normal sized tankers cannot gain access. While smaller tankers can be used it is impractical for them to make numerous trips to a disposal facility to allow the pump out of a large grease trap. This makes it uneconomical for grease trap wastes to be legally removed from these properties.

The proposed amendment will deliver significant benefits to the industry. It allows tanker operators to perform tanker-to-tanker transfers without the need to return to the depot to discharge the load.

Most grease trap waste transporters would encounter situations where a smaller tanker is needed to pump out grease traps because normal sized tankers cannot gain access.

The proposed amendments will reduce the regulatory burden on industry by allowing transfer of grease trap and oily wastes to consolidate loads where a small tanker is used to collect waste where a normal sized tanker cannot gain access.

The amendments offer the greatest net benefit to business, the community and government without compromising the risks to the environment from the operation of the activity.

Code of environmental compliance for certain aspects of environmentally relevant activity 63—sewage treatment

Across Queensland there are over 1000 existing sewage pumping stations which require approval to operate environmentally relevant activity 63(3). Assessing applications for these existing sewage pump stations would place significant strain on the States resources, including the on-going administrative burden of assessing new applications. The business impact of continuing to prepare and lodge these applications places significant unnecessary regulatory burden on the water industry.

Sewage pumping stations present a lower risk to the environment which is reflected through this activities aggregate environmental score of zero.

Implementation of this new code through regulation will significantly reduce development application costs for operators of sewage pumping stations. It will also reduce the administrative cost for the Department of Environment and Heritage Protection.

Consultation

Consultation on the various amendments was undertaken with the relevant interested parties and sectors.

Consultation on implementation of the Queensland Floods Commission of Inquiry recommendation was undertaken with the Departments of Natural Resources and Mines, State development and Infrastructure Planning, Transport and Main Roads, Agriculture, Forestry and Fisheries, Local Government and Tourism, Major Events, Small Business and the Commonwealth Games, and Queensland Treasury.

Consultation was also undertaken with the Australian Industry Group, Cement Concrete and Aggregates Australia, the Chamber of Commerce and Industry Queensland, the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, the Queensland Farmers Federation, the Waste Contractors and Recyclers Association of Queensland and the Local Government Association of Queensland.

The Australian Lot Feeders' Association, the Department of Agriculture, Forestry and Fisheries and Queensland Treasury were consulted in relation to the amendment of section 122 to recognise the National Feedlot Accreditation Scheme as a prescribed environmental management system.

Consultation was undertaken with the small-scale mining sector regarding a series of issues, including dates of relevance to the sector. The small-miners and Queensland Resources Council indicated strong support for alignment of all relevant dates in order to avoid confusion between various commencement dates. This includes extension of 2 November 2012 until 31 March 2013.

Consultation on the Code of environmental compliance for certain aspects of extractive and screening activities (ERA 16) occurred with key industry and environment organisations and government departments. Organisations consulted were Department of Transport and Main Roads, the Local Government Association of Queensland, Cement Concrete and Aggregates Australia and the Queensland Conservation Council.

Consultation on the Code of environmental compliance for certain aspects of regulated waste transport (ERA 57) occurred with the Waste Contractors and Recyclers Association of Queensland and the Local Government Association of Queensland.

Significant industry consultation occurred during the development of the new Code of environmental compliance for certain aspects of environmentally relevant activity 63—sewage treatment. Industry representatives (through an expert advisory panel consisting of representatives from various regional waster providers and facilitated by the Queensland Water Directorate) and Department of Environment and Heritage Protection officers were involved in the consultation.

Results of consultation

All amendments are supported.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that the short title of this legislation is the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2012.*

Part 2 Amendment of Environmental Protection (Air) Policy 2008

2 Policy amended

Clause 2 states that this part amends the *Environmental Protection (Air) Policy 2008*.

3 Amendment of sch 1 (Air quality objectives)

Clause 3 states that the entry for carbon disulfide in column 3 of schedule 1 is amended to omit 210 and replace this value with 21.

The amendment corrects a drafting error when the *Environmental Protection (Air) Policy 2008* (Air EPP) was remade. The values contained in the Air EPP are largely based in the World Health Organisation guidelines. The value in the guideline is 20µm/m3. In the 2008remake, this was to have been changed to 21µm/m3 due to the conversion to 0oC that was not used in the 1997 EPP.

Part 3 Amendment of Environmental Protection Regulation 2008

4 Regulation amended

Clause 4 states that this part amends the *Environmental Protection Regulation 2008*.

5 Amendment of s 51 (Matters to be considered for environmental management decisions)

Clause 5 inserts a new paragraph for s 51(1).

New paragraph 51(1)(i) provides that when the administering authority is making an environmental management decision, the likelihood of flooding of the relevant site for the activity, and the potential for a flood to result in the movement of a contaminant, whether or not in a container, from the site into the receiving environment must be considered.

The likelihood of flooding relates to the annual exceedance probability for the receiving environment. Annual exceedance probability is defined in the State Planning Policy 1/03: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide. Consequently, this regulatory requirement would not apply to stream diversions and dams on the site.

6 Amendment of s 122 (Definitions for div 2)

Clause 6 provides an amended definition for prescribed environmental management system.

A ***prescribed environmental management system*** means an environmental management system that a conformity assessment body has certified as conforming to AS/NZS ISO 14001:2004 or a scheme that is mentioned in schedule 11.

7 Amendment of s 137A (Refund of annual fee if environmental authorities amalgamated)

Clause 7 amends s 137A to extend the date by which the holder of two or more environmental authorities for a mining activity can make an amendment application under section 238(2) of the *Environmental Protection Act 1994*.

The new date for this application is now 31 March 2013.

8 Amendment of sch 3 (Codes of environmental compliance)

Clause 8 amends schedule 3 to include a new code of environmental compliance and updated versions of particular codes of environmental compliance.

Subsection (1) replaces version 6 of the Code of environmental compliance for certain aspects of extractive and screening activities—(ERA 16) with version 7 of this code.

Subsection (2) replaces version 3 of the Code of environmental compliance for certain aspects of regulated waste transport—(ERA 57) with version 4 of this code.

Subsection (3) inserts a new code. This is a Code of environmental compliance for certain aspects of sewage treatment activities (ERA 63)—Version 1.

9 Insertion of new sch 11

Clause 9 states that a new schedule—schedule 11—is inserted after schedule 10.

Schedule 11—Prescribed environmental management systems provides that a scheme, other than an environmental management system that a conforming assessment body has certified as conforming to AS/NZS ISO 14001:2004, is recognised as a prescribed environmental management system for the purposes of the Regulation. The scheme mentioned in Schedule 11 is the National Feedlot Accreditation Scheme, Rules of Accreditation published by AUS-MEAT Limited ABN 44 082 528 881 in 2001.

It is noted that, at the commencement of this schedule, the National Feedlot Accreditation Scheme, Rules of Accreditation was available at www.ausmeat.com.au

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Environment and Heritage Protection.

Authorised by the Parliamentary Counsel
and printed by the Government Printer