



TOTAL ENVIRONMENT CENTRE

The Executive Director
Policy and Science Division
Department of Environment and Conservation
PO Box A290
Sydney South 1232

18th February 2005

Dear Sir/Madam,

Proposed amendment to *POEO (Clean Air) Regulation 2002*

Introduction

The *Clean Air (Plant and Equipment) Regulation 1997* (CAPER) has prescribed air pollutant emission standards and requirements relating to industrial plant, equipment and activities since 1997. The Department of Environment and Conservation is now proposing that CAPER be incorporated into the *POEO (Clean Air) Regulation 2002*. The Environmental Defender's Office of NSW and the Total Environment Centre support this proposal.

This submission is limited to comment on the proposed amendments to the Regulation, and does not include comment on the the "Approved Methods for the Modelling and Assessment of Air Pollutants in NSW, and Approved Methods for the Sampling and Analysis of Air Pollutants in NSW."

This submission is made on behalf of the Environmental Defender's Office of NSW (EDO) and the Total Environment Centre (TEC). We welcome the opportunity to comment on these reforms.

Amendments

The proposal involves inclusion of a new Part 4 in the *POEO (Clean Air) Regulation 2003* prescribing standards and requirements for "Industrial and Commercial activities" (in a similar manner to Part 2 which deals with domestic solid fuel heaters and Part 3 which deals with motor vehicles and fuel).

The response of EDO and TEC to the major aspects of the proposed amendments, as stated in the Regulatory Impact Statement (RIS), are outlined below.

- **Emission concentration standards for new plant that reflect contemporary technology**

EDO and TEC support the introduction of emission standards that reflect contemporary technology. However, we strongly advocate the development of medium and long-term emission standards (ie, the creation of a Group 7). This would allow industry to conduct research and development practices that would ensure they could attain future air emission standards. Establishing medium and long-term air emission standards will provide industry with certainty whilst offering the community with assurances of improving air quality.

The *POEO Act 1997* objects include “the *reduction to harmless levels of the discharge of substances likely to cause harm to the environment*” (section 3 (d) (ii)). The proposed Regulation does not attempt to establish future standards for the phase-out of carcinogenic, mutagenic, teratogenic and highly persistent, bioaccumulative and toxic substances such as dioxins, furans and mercury. The community has clearly identified its desire to remove these classes of chemicals from the environment and this should be reflected in the Regulation.

We would also like to express concern that the air emission standards have not been developed to protect sensitive sub-populations of the community such as children and the elderly. The standards have been developed on the ability of industry to conform rather than the protection of health.

- **Industry-specific emission standards for major scheduled activities**

EDO and TEC welcome the development of industry-specific emissions by DEC.

However, we believe that the RIS should have provided comparisons between international best standards/practice and the air emission standards as this would allow for greater community interpretation and comment. We recommend that all future reviews of this Regulation include clear tables comparing NSW air emissions with international best standards.

- **Generic emission standards that apply where no specific standards are set for scheduled and nonscheduled industry**

EDO and TEC support this safety net.

- **A process for review of the emission standards that apply to older scheduled activities and plant**

EDO and TEC are concerned with the extremely generous time periods allowed for Group 1 to reach Group 2 standards. The regulation allows Group 1 industry to attain 1979 standards by 2008.

It is stated on p.54 that pre-1972 (Group 1) industry comprise ~10% of stack discharges but are responsible for 47% of particulate matter, 54% NO_x and 48% SO_x. It should therefore be documented what impact the 7 year phase-in (Group 5 by 2012) will have on particulate, NO_x and SO_x emissions.

We note that the proposed Regulation allows for effected industry to apply for continuation of existing limits where there is no impact. This is reviewed every 5 years, but there is no limit on the number of extensions. The number of available roll-over extensions should be capped at a maximum of two.

- **Performance standards for new flares, afterburners and vapour recovery units**

EDO and TEC support these new standards.

- **Introduction of additional emission standards for plant and activities using non-standard fuels**

EDO and TEC acknowledge the need for additional regulation of non-standard fuel, for example to regulate specific emissions of blended fuels. Notwithstanding the fact that this may create disincentive to reusing or recycling fuel, air emission standards based on public health considerations must take precedence over resource recovery issues.

- **A requirement that when plant on a premises (scheduled or non-scheduled) in the Greater Metropolitan Area is replaced, the replacement plant shall be subject to contemporary emission performance standards (as specified in the Regulation)**

EDO and TEC support this amendment for the Greater Metropolitan Area where the concentration of emissions is a serious issue for the health of the community and the environment.

- **A requirement that any major modification of existing plant be subject to contemporary emission performance standards (Group 6, as specified in the Regulation) or a site-specific emission limit.**

All industry that fails to reach Group 6 air emission standards and applies for site-specific emissions should disclose this information to the local community. This would allow the community to engage in the industries ongoing air emission practices and provide input in the development of pollution reduction plans.

Additional Issues

Public register

The Regulation should provide for a public register on a website. This should contain up to date information on standards which apply to particular plant so that the community can be kept informed on plant in their area.

Review

TEC and EDO recommend that there be a systematic industry review conducted, with an independent audit of what plant is in what group under the new Regulation. This data collection is essential for ensuring that plant is subject to appropriate emissions standards with a view to bringing old plant up to meeting new standards.

Should you require further information on this submission, please contact Ben Cole on 92995680 or ben.cole@tec.org.au or Rachel Walmsley on 9262 6989 or rachel.walmsley@edo.org.au.

Yours sincerely,

Jeff Smith
Director
Environmental Defender's Office

Jeff Angel
Director
Total Environment Centre