

28th November 2014

David Fowler
Director Reform & Compliance
Environment Protection Authority
Sydney NSW

By email: continuous.improvement@epa.nsw.gov.au

Dear David,

Draft Protection of the Environment operations Amendment (NSW Gas Plan) Regulation 2014

As a community legal centre specialising in public interest environmental law, EDO NSW welcomes the opportunity to provide comment on the *Draft Protection of the Environment Operations Amendment (NSW Gas Plan) Regulation 2014*. We support a strong regulatory role for the NSW EPA, with transparent and robust licensing requirements for all relevant activities.

The EDO NSW community legal advice line receives numerous calls from landholders, community groups, environment groups and local Councils concerned about the regulation of CSG and extractive industries in NSW. We have undertaken an extensive amount of legal and law reform advice in this area.¹ In this context, we strongly submit that 3 days is not an adequate consultation period for a complex and controversial area of law. We make four brief comments below.

Production capacity threshold

The Q&A sheet notes that the amended licensing requirements will apply to “assessable pollutants for petroleum activities with an annual production capacity of greater than 0.5 petajoules (**PJ**).” We submit that 0.5PJ is still a significant threshold. For example, it is possible that Waukivory Pilot Project would not meet this threshold. Setting such a threshold may therefore make it likely that only production wells will have Load-Based-Licences (**LBLs**).

¹ See for example: Submission to Legislative Council inquiry into performance of NSW EPA, August 2014; Submission on EP&A Amendments (Mining and Petroleum) 2014 and the Mining SEPP, July 2014; Submission on amendments to the Mining SEPP – *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*, August 2013; Submission on the *Draft Protection of the Environment Operations Amendment (Coal Seam Gas Activities) Regulation 2013*, May 2013; Submission on the Independent Review of Coal Seam Gas in New South Wales, April 2013; ANEDO Submission on the *Draft National Harmonised Regulatory Framework for Coal Seam Gas 2012*, February 2013. These submissions are available at: http://www.edonsw.org.au/mining_coal_seam_gas_policy.

EDO NSW submits that significant exploration activities should also have LBLs. Current exploration licences for projects that include venting or flaring are within the range of 0-6PJ so it is unclear whether they would be captured in the LBL category under the new regulation.

It is also unclear how an 'operation' would be defined and therefore whether a particular activity will be captured. For example, the Dewhurst Gas Exploration Pilot Expansion Project SSD 6038 and the Bibblewindi Gas Exploration Pilot Expansion Project SSD 5934 in the Pilliga may have separate EPLs despite being part of the same overall project. We recommend that the regulation and supporting guidelines need to make it clear whether a collective operation must have one EPL or may be comprised of a collection of EPLs that would not individually trigger the threshold under the amended regulation.

Scope

The proposed amended regulation does not explicitly include 'shale gas' as an activity that must be licensed. It could arguably be covered under "other forms of unconventional gas, including tight gas and sand bed gas" but for the avoidance of doubt, the regulation should be explicit.²

Exemptions

The Q&A sheet refers to exemptions for "very low impact exploration activities" and Schedule 1, clause [2] of the draft regulation sets out activities that are exempt "other than land in an environmentally sensitive area of State significance". As drafted, this would mean that low impact activities under clause 31(2) can occur in State Forest without the need for an EPL. Activities listed in clause 31 (2)(a)–(f) may have minimal impact, however, we are concerned about the inclusion of (g) and (h) as exempt. Construction, maintenance and use of roads (g) can have significant impacts on areas such as State Forests; and recovering, obtaining or removing CSG in the course of coal mining (h) should be licensed appropriately.

Load-based fees

We note that the load based fees use the lowest threshold currently in use across all categories. We support this measure.

Please contact EDO NSW if you require any further information.

Yours sincerely,

EDO NSW



Rachel Walmsley
Policy & Law Reform Director

² For example, other jurisdictions have separate definitions – see Northern Territory: http://www.nt.gov.au/d/Minerals_Energy/?header=What%20are%20Shale%20gas,%20Tight%20gas%20and%20Coal%20Seam%20Gas?