

16 June 2016

Scheduled Activities Amendment Regulation Review
Reform and Compliance Branch
Environment Protection Authority
PO Box A290
Sydney South NSW 1232

By email: ScheduledActivities.Amendment@epa.nsw.gov.au

Dear Mr Fowler,

**Draft Amendment to Protection of the Environment Operations Regulation
(Scheduled Activities) 2016**

As a community legal centre specialising in public interest environmental law, EDO NSW welcomes the opportunity to comment on the draft *Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016 (Amendment Regulation)*.

We limit our comments to the proposed amendments relating to railway activities (proposed new clauses 33-33B and associated Schedule 2 amendments). As the EPA is aware, EDO NSW has received many enquiries from communities and individuals who are concerned about the potential environmental and health impacts arising from railway activities, particularly in relation to the transport of coal. While we strongly support increased use of rail for freight transport and public transport, railway activities must be appropriately regulated to minimise these environmental and health impacts.

EDO NSW supports the intention of the Amendment Regulation to allow better regulation of railway activities and assign appropriate responsibility for the management of environmental and health impacts. However we have a number of concerns with the Amendment Regulation and have provided recommendations for improvement, below.

We note that the Amendment Regulation seeks to embed the EPA's preferred management option ('Option 10: License railway system and rolling stock operators') from the *Review of regulation of railway systems activities (Review Paper)*.¹ EDO NSW notes that 'Option 4: Develop a new regulation under the POEO Act' would provide a stronger legislative basis for emissions reduction targets from railway activities. However, Option 10 does provide a more effective and efficient

¹ Available at: <http://www.epa.nsw.gov.au/resources/legislation/rail-regulation-review-cost-benefit-analysis-140657.pdf>. The Amendment Regulation (cl 33B(4)-(5)) defines 'rolling stock' to include passenger and freight trains other than heritage or maintenance fleets (paraphrased).

basis for a program of continual improvement for issues such as emissions from locomotives. We are concerned that as a consequence of progressing Option 10, the current Amendment Regulation does not provide clear emissions standards or a timeframe to implementation emissions reductions.² Any new licences issued as a result of implementing the Amendment Regulation must specify clear timeframes for achieving emissions reduction targets.

It is clear from the fact that the average age of locomotives in Australia is approximately 30 years,³ that there is currently little incentive for upgrades of locomotives to newer rolling stock that is more efficient and less polluting. This situation provides a strong case for the addition of load-based fees in Schedule 1 of the *Protection of the Environment Operations (General) Regulation 2009 (General Regulation)* for rolling stock operations. We recommend the addition of load based fees for fine particulates and nitrogen oxides and nitrogen oxides (summer). This would appropriately reflect the polluter pays principle that guides the EPA functions under the General Regulation and would help to drive implementation of emissions reduction technology.

It is unclear how the Amendment Regulation will appropriately address issues such as wheel squeal, which the Review Paper suggests would require “shared responsibility for environmental performance”. Clauses 33A and 33B of the Amendment Regulation each declare certain railway activities as scheduled activities (requiring a pollution licence). Noting the way railway activities are separated in clauses 33A-33B,⁴ it is important that the Regulation enables the EPA to effectively regulate, licence and potentially develop Pollution Reduction Programs for problems with “shared responsibility” (such as wheel squeal). That is, for matters that require management changes in both railway infrastructure operations and rolling stock operations that may be separately licenced.

More broadly, EDO NSW is concerned that railway infrastructure operations and rolling stock operations will only be a scheduled activity railway if they occur on a continuous or connected length of track greater than 30km that is operation by the same person. While recognising that this limit currently applies to Railway Systems Activities, retention of this limit means that tracks associated with the largest source of PM2.5 emissions in the Greater Metropolitan Region, i.e. coal mining,⁵ will, in many cases, continue to remain unregulated during the transport of coal from the mine to the central railway system.

Further, efforts to reduce emissions from rolling stock operations across the network may also be undermined if locomotives can be re-tasked to operate on tracks less

² We note that the Review Report provides a timeframe for establishing new licences for the different railway activities (i.e. railway infrastructure construction, railway infrastructure operations, and rolling stock operations).

³ As reported by the Locomotive Emissions Project Scoping Study of Potential Measures to Reduce Emissions from New and In-Service Locomotives in NSW and Australia and associated documents available at: <http://www.epa.nsw.gov.au/esdsmoky/redlocoemis.htm>

⁴ The proposed wording of clause 33A—railway infrastructure operations expressly excludes “any operation of rolling stock to which clause 33B applies”. Clause 33B separately declares rolling stock operations as a scheduled activity.

⁵ Diesel and Marine Emissions Management Strategy available at www.epa.nsw.gov.au/resources/air/150038Diesel-marine-strategy.pdf

than 30km in length thereby avoiding any emissions reduction requirements. EDO NSW recommends removing sub-clauses that limit scheduled activities to those railway infrastructure operations and rolling stock operations that occur on a continuous or connected length of track greater than 30km.

If there are any matters that you would like to discuss please do not hesitate to contact the writer on ph: 9262 6989 or by e-mail: rachel.walmsley@edonsw.org.au.

Yours sincerely,
EDO NSW

Rachel Walmsley
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