

29 April 2016

Via email

Dear Ms Zotti

Re: Revised Air Quality EPP 2016

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

We appreciate your recent briefing and the opportunity to provide a submission on revisions to the draft 2016 Air Quality EPP (the Policy).

The Policy is an important regulatory tool in relation to protection of public health and safety, and the environment, from the harmful side effects of industrial activity.

This submission will focus on the proposal to make stack emissions standards non-mandatory and simply a factor to be taken into consideration, alongside ambient standards, when licensing scheduled premises. Industry have argued that this approach allows them more flexibility. It is proposed that the process will be reflective of a risk-based approach resulting in fewer compliance costs for industry.

It is proposed that the primary driver of decision making will be ground level concentrations (GLCs). Other matters to be considered are provided for in clause 18. In our view such a system is simply designed to produce “acceptable” levels of pollution and implementation could result in inadequate protection of human health, safety, and the environment. The EDO’s concerns/queries are as follows;

1. The process only takes stack emission standards into account where the GLCs and odour levels are not applicable. The true impacts on the environment are not adequately considered.
2. It is a more complex system than what is in place currently and in addition lacks transparency and accountability.

The proposal relies on industry undertaking modelling and the EPA having sufficient and consistent expertise to review the results. The EDO recommends that modelling be done independently of industry by accredited experts similar to the system currently in place with respect to site contamination.

The nature of the modelling to be used is unclear. Have the documents entitled “Ambient Air Quality Assessment 2016” and “Evaluation Distances for Effective Air Quality and Noise Management 2016” been drafted? The EDO has not had an opportunity to examine these documents in order to form a view as to whether the processes are robust. It is also unclear whether there must be adherence by industry and the EPA to the contents of these documents.

3. In the original draft Policy PM 10 and PM 2.5 were classed as a Group 1 carcinogen but are now classed as just toxicity. These pollutants are emitted from many sources and are widely spread.

The EDO recommends technology – based and technology-forcing regulation for the following reasons:

1. Standards are set which are achievable by industry using technology that is already available or will be available within the foreseeable future.
2. It is even-handed in that all members of the same industry are treated equally. As standards set minimal levels of control with which every industry must comply with these standards take away incentives that industry might have to relocate.
3. As the level of control but not the method of achieving it is mandated there are continuing incentives for industry to comply with control requirements as efficiently as possible.
4. It is a relatively inexpensive system for the regulator as the costs of determining the level of control which industry is capable of achieving using current technology is less than assessing the impacts of pollution sources on the environment.
5. It is more consistent than a cost-benefit analysis as it recognises and seeks to protect the nonmarket values of human life and the natural environment.
6. A market-based approach such as emissions trading can be used side by side with this system. The controls set individual source emission limits that sources are free to meet by controlling themselves or by purchasing emission credits from other sources that have over controlled. The combination of these controls with carefully monitored emissions trading would provide incentives to industry to meet their emission limits in the most efficient manner possible.

Please advise if you require clarification on any of the issues raised in this submission.

Yours faithfully



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