ENVIRONMENTAL DEFENDERS OFFICE (SA) INC

The environment's legal team since 1992 - Protecting the public interest - evening the odds

Ph: (08) **8359 2222** SA Country Freecall: 1800 337 566
Office: 1st Floor, 182 Victoria Square, Adelaide, SA. Post: GPO Box 170, Adelaide, SA, 5001
Web: http://www.edo.org.au/edosa/

EDO(SA) Comment upon the Draft Environment Protection (Variation of Act, Schedule 1) (Resource Recovery, Waste Disposal and Related Activities) Regulations 2015 -20th March 2015

The Environmental Defenders Office (SA) Inc. ("EDO(SA)") is a community legal centre with over twenty years of experience specialising in public interest environmental and planning law. EDO(SA) provides legal advice and representation, undertakes law reform and policy work and provides community legal education.

We make the following comments in regard to the draft Regulations:

Amendment to Schedule 1, Part A, clause 1(6):

The "intention" of the primary producer should not be a relevant consideration. Intention is very difficult to establish. The primary producer exclusion should only apply (as in the current clause 1(6)) to timber actually used by the primary producer.

Schedule 1, Part A, proposed clause 3(2)(d)

Scrap metal treatment works – the amendment imposes a 100 tonne per annum threshold test. The existing clause 2(11) has no threshold test. EDO(SA) is concerned that the threshold may be too high. Please provide written feedback on the methodology used to determine the 100 tonne threshold and how many treatment works that currently require licences will be exempt under the proposed 100 tonne threshold amendment.

Schedule 1, Part A, proposed clause 3(2)(h)

Wastewater treatment works – Please provide written feedback on whether the shift in thresholds from 100/1000 persons per day peak loading capacity to 3 ML/30 ML per annum will substantially increase or decrease the current number of treatment works that require licences.

Schedule 1, Part A, proposed clause 3(2)(b) & (c)

Composting and organic products works – in order to avoid uncertainty, it should be specified whether the tonnage amounts are references to the dry or wet weight of the organic waste or matter.

Schedule 1, Part A1 – Interpretation, Prescribed approved activity (d) – "temporary on-site storage" and Schedule 1, Part A, proposed clause 3(4)(b)(i) – "temporary on-site storage" – the amendments propose to include "temporary on-site storage" of waste as a prescribed approved activity (other than tyre waste) and propose to exclude "temporary on-site storage" of waste from being an "Activity involving listed wastes".

The term "temporary" needs to be clearly defined. In the proposed amendments there is no definition. What period of time must elapse before the storage becomes permanent? Is temporary to be determined by the purported intention of the operator?

If “temporary” remains undefined, it creates an area of great uncertainty in the “prescribed Activities” regime. Such uncertainty will lead to adverse outcomes for the environment, the regulators and the operators.

In addition, there needs to be a quantity/weight limit on the amount that can be stored on-site temporarily.

It is noted that a “prescribed approved activity” is only excluded if the EPA is satisfied that the activity poses a negligible risk having regard to the prescribed factors. However, the establishment of simple time (on-site) and quantity/weight criteria, in regard to ‘temporary on-site storage” will create greater certainty and confidence in the system.

In regard to **Schedule 1, Part A, proposed clause 3(1),** it is unclear what the difference is between a “ transfer station” being “a depot etc. for the reception and aggregation of waste streams (prior to their transport ……. for disposal)” and a “prescribed approved activity” being “temporary on-site storage … while awaiting transport”.

The matters noted above need to be clarified to avoid uncertainty and to close a potential loophole in the waste storage licensing regime.

Prescribed Approved Activities – annual reporting

In order to promote transparency and accountability, data on the numbers, locations and types of “prescribed approved activities” that have been excluded, by the EPA under Schedule 1, should be published annually on the EPA website.

Schedule 1, Part A, proposed clause 5(4) – piggeries

Clause 4.3 of the *National Environmental Guidelines for Piggeries 2010 (second edition (revised))* states:

> *A **Standard Pig Unit (SPU)** is a unit for defining piggery capacity based on by-products output. The manure and waste feed produced by one SPU, contains the amount of volatile solids (VS) typically produced by an average size grower pig (90 kg VS/yr). SPU multipliers for other pig classes are based on their comparative VS production.*
> *This definition assumes that the pig is fed a typical diet, has typical feed wastage and is not fed with advanced feeding technologies, such as phase feeding. Consequently, there are two methods for specifying the total number of SPUs in a piggery.*

Both methods are then set out in the Guidelines.

Which method does the EPA require piggery operators to use to calculate the SPU capacity of a piggery? Please provide written feedback on this issue.

EDO(SA) is very concerned that: (a) there is no certainty or clarity about how the SPU calculation is to be made under the two SPU calculation methods; and (b) the EPA is, through adopting an industry set standard (the SPU), delegating its regulatory responsibilities to the industry that the EPA is meant to be monitoring.

EDO(SA) acknowledges that, under the proposed clause 5(4), the EPA can assess the capacity of a piggery in an (alternative) “manner approved by” the EPA. This simply emphasises the important issue that the EPA should not be relying on industry set assessment methods – which, in regard to piggeries, are uncertain in any event because of the two possible methods for specifying the total number of SPUs in a piggery.