

14 April 2022

POEOGenReg.review@epa.nsw.gov.au

NSW Environment Protection Authority
4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150

Dear EPA

RE: Submission on the Draft Protection of the Environment Operations (General) Regulation 2022

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *Draft Protection of the Environment Operations (General) Regulation 2022* (Draft Reg.)

The [Australian Sustainable Business Group](http://www.asbg.net.au) (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 100 members comprising of Australia's largest manufacturing companies and other related businesses.

1 OVERVIEW

ASBG in general welcomes most of the proposed changes to the POEO (General) Regulation 2022. In particular, the amendment to the requirement to redo Pollution Incident Response Management Plan testing one month after a Material Harm (actual or threatening) incident. Most of the issues refer to clarification or area on the fringes or outside the scope of the review, but these need to be considered ideally for this review or for later inclusion or under other reviews involving the regulation.

There are a few issues which do require comment:

- The application fees for Chemical Storage, prescribed waste
- Clarification on the changes to Extractive Industries
- Clarification on waste storages
- Changes to the National Pollution Inventory

2 Application Fee for Prescribe Waste Storage

There are many EPL activities which have 5 or 8 Fee Units (FU) (\$730 or \$1,168) (assume \$146 is the next increase applicable when this becomes enacted), where, apart from waste transport the 'straight forward' proposed minimum fee cost is 37 FU (\$5,402). While the argument of high costs for processing EPLs as part of the planning process is accepted, there are a few activities which do not.

The case in point is the *Chemical Storage, Prescribed Waste* criteria which has an annual fee of 8 FUs for sites of > 5 tonnes in storage and < 100t of annual production. This activity has always been considered the smallest of all site based EPL activities. Note, to be considered licensable, normally the EPA considers tanks dedicated for waste storage (see section 4 for more issues). Correspondingly, process tanks which are cleaned out irregularly or generate prescribed waste from maintenance activities are not usually considered to trigger this licence threshold.

EPA indicated that the application fee would not involve site inspections—action done after a licence is granted—but would include the need to draft the EPL and have it ‘accepted’ by the site. This will involve legal work, potentially more if there are negotiations over the draft licence, as well as the administrative process.

The prescribed waste storage EPL is often triggered outside of the planning system (there are cases where this can occur, but ASBG is not counting them in for change as they would have triggered another Schedule 1 threshold). In addition, prescribed waste storage licences, being simple rarely result in a negotiation process with the EPA. In fact, such licence applications are more comparable to waste transport licences attract a 4 FU charge. ASBG accepts there is a cost risk to the EPA should a draft waste storage licence be negotiated or even appealed. However, this risk also resides with a waste transport licence. In terms of environmental risk, a prescribed waste storage licence for between 5t to 100t it is comparable, if not lower, than for a waste transport licence. Even a 5t waste storage tank would require bunding and probably also a roof. In contrast a waste transporter would be carting likely many times the volumes generated by an average waste storage licence holder, with no bunding and at much higher risk of environmental harm.

Hence, EPA’s position of requiring this EPL type to other straight forward licences, which are commonly undertaken using the planning system, is not reflective of the amount of work involved for the EPA. ASBG considers the real costs of a Prescribed Waste Storage EPL with no consent required is more like 16 FUs, or double the annual fee unit.

R1 ASBG recommends the EPA reconsider its application fees for Waste Storage Licences 5t to 100 t at one time to better reflect the costs for this simply type of licence.

3 Extractive Industries

Extractive industries activity under c 19 Schedule 1 POEO Act changes, may cause issues due to the interpretation between extractive activities, excavations and earthworks. The issue is caused by the discarding of the current requirement that the material be sold, hence capturing a new set of activities which generate material which is not sold as well. Though this would only affect large sites where >30,000 tpa of earth, rock and stone are being moved. For example, a site is undergoing rehabilitation which includes significant movement of soil and rock on site with relocation of the material elsewhere on the site. Extraction can be interpreted as causing a pit or depression in land by removal of material.

If the definitions of ‘excavation’, ‘cut and fill’ and ‘earthworks’ — which are excluded from an extractive activity—could be narrowly interpreted capturing unintended activities. For example, the following could be captured under the proposed changes:

- Rehabilitation works
- Flood levy bank construction,

- Landfill; dam, levy, stormwater leachate management
- Mining operations with similar works as landfills

While the above examples must first trigger the 30,000 tpa, landfilling and mining are likely to be first captured under other sections of Schedule 1 POEO Act, though rehabilitation can be either way. EPA needs to consider if it wishes to also licence environmentally beneficial activities such as rehabilitation, flood levy bank construction and other unintended activities. ASBG considers these types of activities should be excluded as they are beneficial and or would pose similar if not lower operational environmental issues as the excluded excavation of foundations. In addition, many sites with rehabilitation projects are captured under other environmental controls, such as EPL, planning consent and mining has many. Solutions include to better define earthworks, or to exempt rehabilitation, flood levy bank, certain landscaping and other environmentally beneficial actions.

R2 ASBG recommends that the draft c19 Extractive Industries Schedule 1 POEO Act:

- **Define earth works and extractive actions in the regulation and or,**
- **Exempting the use of on-site derived material for specific on-site reuse subject operational and end uses such as rehabilitation.**

4 Waste Generation

ASBG supports the changes to the storage volume basis rather than a waste generation rate approach in setting EPL thresholds and fees. However, clarification of how these thresholds are used by the EPA could be made more formal. The 5 tonne storage at any one time for *prescribed waste* licensing threshold applies for the following licensed activities under Schedule 1 POEO Act:

- 7 Ceramic Works
- 8 Chemical Production Waste Generation
- 9 Chemical Storage
- 26 Metallurgical Activities
- 27 Mineral Processing
- 30 Paper or Pulp Production
- 32 Printing, Packaging and Visual Communications

Of these the *Chemical Storage* licence activity is broad and captures most activities that generate and store more than 5 tonnes at any time (5t rule). Nevertheless, all of the above use the 5t rule is applied to where the prescribed waste was generated by a process, in a reasonably consistent manner, then stockpiled in a bay or a tank of >5 tonnes or kL. This rule of thumb arrangement, used by the EPA, prevented *ad hoc* (one off and temporary) process errors and incident based wastes from requiring an EPL. For example, consider a site, unlicensed for the 5t rule, with the following temporary process issues:

- A spill in a bund results in > 5 kL of prescribed waste
- A process error requires pump out and removal of contaminated products of 8 kL
- A Dissolved Air Flotation system requires to be pumped out due to being filled with sludge over time
- A site has a fire incident, which triggers its foam system and or generates fire water, which requires collection and pump out etc.

- A waste tanker collects from multiple areas on and off-site sources an amount that is > 5t and stays there for overnight, hence “in transit”.

Requiring an Environment Protection Licence EPL on the above *ad hoc* process issues and incidents would be highly disruptive to the business given the time and resources required to process, review and issue such a licence. In general, EPA does adhere to the dedicated tank or stockpile area, ignoring *ad hoc* process wastes, but a more formal clarification would assist, perhaps on the website or in a guideline.

ASBG notes there is confusion around on-site and off-site wastes and what are wastes in general. This is a complex area which causes considerable confusion within industry and even the EPA. For example, the [EPA v Grafil CCA](#) case changes the legal interpretation of waste under the POEO Act’s dictionary. There is a clarification issue of what is the *on-site off-site rule*, which has been provided in presentations by EPA’s waste section of the EPA for at least 5 years. The *on-site off-site rule* is based on Schedule 1 waste activities, which receive wastes from off-site. So in general wastes made on-site are for regulatory purposes not considered “wastes”. Note there are exceptions for storage of prescribed wastes. ASBG prepared a detailed submission¹ on this issue as it lacks clarity and different parts of the EPA don’t play by the waste sections’ meaning. Senior management indicated in late 2019 that EPA would generate a guideline clarifying the on-site off-site rule, which is still in development, but would assist in clarification of the *on-site off-site rule*.

There are a number of knock-on issues affecting Schedule 1 regarding waste. For example, Resource Recovery Order (RRO) material being stored at a *consumers* site, if > 1,000 t or 6,000 tpa it can trigger a s34 Resource Recovery or s42 Waste Storage licence as RRO material is still defined as ‘waste’. However, this affects sites such as asphalt batch plants, concrete batch and block manufacturing sites etc. which use RRO materials as a raw material replacement. Introducing an EPL requirement on storage of lower risk downstream resource recovery activities, would place further restrictions and costs on an already regulated activity, at a minimum under the Resource Recovery Exemption. ASBG is recommending the use of an *End of Waste* provision, for certain RRO materials, which is an identified issue in ASBG’s submission for the Resource Recovery Framework Review (RRF). There are a few cross over issues between POEO (General) Regulation 2022 and the RRF Review, which our submission on RRF will cover available from 6 May 2022.

5 National Pollutant Inventory Changes

Proposed changes to Chapter 4 POEO (General) Regulation 2021, includes the addition of the reporting of quantities of substances used, in addition to their emissions and industry sector estimation techniques. The issues with the proposed changes include:

- Duplication of Category 2 data with NGER reporting sites
- Linking new estimation techniques with the national system

5.1 Duplication of Data

One issue is the duplication of such data for sites that report under the National Greenhouse Energy Reporting (NGER) scheme, which gathers such data on fuel (NPI Cat 2a and 2b) use and burning. Such information can be collected from the Commonwealth directly by the EPA under the [Intergovernmental Agreement on data sharing between Commonwealth and State and Territory governments](#) (IGADS). Given

¹ [ASBG's Submission on the On-Site / Off-Site Rule - 2019](#)

this, gathering NPI data from the NGER reporting sites should generate resource savings for both the EPA and those reporting entities.

R3 ASBG recommends the proposed requirement to provide annual quantities under NPI, exclude entities where Category 2 data (fuel quantities) is accessible under the IGADS.

5.2 Alternative Estimation Techniques

ASBG welcomes the proposed development of alternative estimation techniques for NPI reporting. However, there are a few issues which need to be considered including:

- For NPI reporting the EPA should ensure that for emissions reported under NPI, EPL condition and or LBL should use the one same method and data for all. Many of ASBG members report the EPA sees difference in methods used as breaches of environmental law.
- The proposed development of emission estimate techniques for industry sectors is welcomed, provided these are developed using industry sector input and review.
- Can the alternative industry Emission Estimation Techniques (EET) be used to possibly replace NPI Handbooks? Such EETs should be developed where they will be accepted practice for use by other jurisdictions. or be otherwise accepted by other jurisdictions as alternatives. But this can be difficult as for example, Western Australian EPA has already rejected other jurisdiction's based NPI EETs. ASBG notes the Review of the NPI recommendation 4 point 1 states: *review and update the substance list, EET and EET manuals*. Here the NSW EPA could contribute to the updating of the EET manuals with reference to those industries under the EET at the national level.

This submission has been prepared with the input and assistance of members of ASBG's Policy Reference Group (PRG).

Should you require further details and clarification of the contents of this submission please contact me.

Yours Sincerely



Andrew Doig

CEO

Australian Sustainable Business Group (ASBG)

T. +612 9453 3348

A. (PO Box 326, Willoughby NSW 2068)

andrew@asbg.net.au