

NSW farmer for the clearing of land within the Gwydir wetlands RAMSAR site. The report can be accessed at <http://www.deh.gov.au/about/publications/annual-report/04-05/legislation-epbc.html>

NEPC Annual Report released

The National Environment Protection Council has released its Annual Report for 2004-2005. The Report contains information on the major activities of the NEPC and the NEPC Committee during 2004-05 and a list of publications released by the NEPC. The major issues addressed by the NEPC during the year were: water recycling, chemicals, air quality, waste management, site contamination and the National Pollutant Inventory. The report can be accessed at http://www.epbc.gov.au/nepc/annual_report05.html

UNFCCC reports increase in Australia's greenhouse emissions

The secretariat for the UN Framework Convention on Climate Change has released a report on Key GHG Data. The Report finds that GHG emissions from developed countries were down 5.9% but warns that further efforts are required to sustain these reductions and to cut the emissions further. Australia's emissions are reported to have increased by 23.3% between 1990 and 2003. The report can be accessed at http://unfccc.int/essential_background/background_publications_htmlpdf/items/3604.php

NEW SOUTH WALES

Editor: Nicholas Brunton

Protection of the Environment Operations Amendment Act 2005

Increased penalties for pollution offences became a reality with changes to the *Protection of the Environment Operations Act 1997* (the Act) coming into force on 1 May 2006. Along higher penalties, the amendments introduced new pollution offences, changes to the waste regime, removed the "no knowledge" defence for directors and managers, and introduced a new system of "green offsets" to counter the effects of point source pollution.

The maximum penalties for Tier 1 offences increase to \$5 million for wilful pollution (and \$2 million for negligent pollution) by companies that harm the environment. Maximum penalties for Tier 2 offences will be increased to \$1 million for companies.

In addition to the increased penalties, other changes include the following.

- The introduction of a new offence, under section 142A, of causing or permitting land pollution with a maximum penalty of \$1 million for companies.
- Amendments to section 169 under which company directors and managers will no longer be able to avoid a prosecution on the basis that they had no actual or implied knowledge that their company breached pollution laws. The amendments also allow evidence of the opinion, belief or purpose (in addition to intention) of an officer, employee or agent of a company to be used as evidence of that company's state of mind in proceedings against the company.
- An extended offence under section 144AA in relation to waste facilities, and a revised definition of "waste".
- Provisions for smoke abatement notices to be issued to control smoke pollution.
- Additional powers for authorised offices including wide-ranging powers in relation to compelling the attendance of people to answer questions, the recording of questions asked, and extended powers in relation to the taking of samples.

The amendments also introduce a new system of "Green offsets" to require EPA licence holders to provide or participate in schemes for the provision of green offsets to mitigate the effect of their licensed activities. For example, it is proposed that a green offset scheme might be used to carry out a program for the restoration or enhancement of the environment related to a licensed activity.

An amendment made by the Upper House provides that a licence can not be issued with a “green offset” component unless the EPA can be certain that the green offset scheme or work is likely to last until at least the relevant impact of the activity is offset. The intention of this change was that the offset scheme should provided continuity such that if the impact of the activity were to continue beyond the licence term the benefit of the offset would also continue.

Further, because the whole concept of “green offsets” is new, the Upper House made it compulsory rather than optional to specify methodology for determining compliance with licence conditions relating to “green offsets” (if a methodology is available) and to enforce periodic reporting of the evaluations to determine if the offsets are working effectively.

Land Pollution

Amendments made by the Upper House to the new offence under section 142A of causing or permitting land pollution with a maximum penalty of \$1 million for companies resulted in the inclusion of a defence where the pollution results from the use of non-hazardous stock feed.

Proposed Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation

The Department of Environment and Conservation (DEC) has prepared a draft Regulation to control and regulate the storage of petroleum products (including waste oils) in underground petroleum storage systems (UPSS) in NSW. The proposed Regulation focuses on a preventative approach to minimise the risk of soil and groundwater contamination. Its objective is to reduce the environmental risks and harm caused to human health from leaking UPSS.

The rationale behind introducing the Regulation is that, although some operators of UPSS comply with the *Code of Practice: The Design, Installation and Design of Underground Petroleum Storage Systems (UPSS) (the Code)*, not all do and management practices at UPSS sites across NSW are inconsistent, particularly with respect to pollution prevention measures. This results in contamination to the soil, groundwater, surface and air and environmental risk to human health. There are also financial impacts due to loss of fuel and the cost of cleaning up contamination and pollution.

The main elements of the proposed Regulation are:

- Minimum equipment standards for all new UPSS which will include secondary containment of all UPSS - these standards will also apply where an existing UPSS is replaced or substantially repaired;
- Installation of new UPSS must be in accordance with the Code;
- A phased adoption of performance standards that are consistent with the Code - The performance requirements include:
 - adoption of leak prevention systems in new systems, for existing systems this will be phased over 2 years;
 - adoption of systems for early detection of leaks;
 - timely and consistent reporting when UPSS leaks are discovered;
 - appropriate investigation of a leaking UPSS; and
 - implementation of appropriate operational management systems at all UPSS sites.
- Local councils must be notified when a UPSS is decommissioned so that possible site contamination can be investigated and remediated where necessary; and
- To declare the EPA as the appropriate regulatory authority for UPSS related pollution incident reporting and for compliance with UPSS management standards for the initial 4 years.

The proposed Regulation will apply to persons with management and/or control of a UPSS or “occupiers” of the premises in which a UPSS is located

The proposed Regulation highlights two important environmental issues

- under the POEO Act is an offence, in most cases, if fuel tanks are leaking or substances are escaping from a UPSS causing environmental harm (for example, the pollution of waters) - the proposed Regulation still relies on existing notice provisions and offences under the POEO Act, and
- duties to report contamination under the *Contaminated Land Management Act 1997* may also apply, in some circumstances, where fuel tanks are leaking and causing environmental harm

Environmental Planning and Assessment Amendment Act 2006

On 28 February 2006 the *Environmental Planning and Assessment Amendment Bill 2006* was introduced into Parliament. The Bill was passed on 3 April 2006 and provides for

- Planning Assessment Panels
- levying of Special Infrastructure Contributions
- powers for the Minister to make or amend Contributions Plans
- powers for the Minister to make or amend DCPs
- minor amendments relating to the *Redfern-Waterloo Authority Act 2004*

Planning Administrators and Planning Assessment Panels

The amendments allow the Minister to appoint a Planning Assessment Panel to carry out the planning functions of the council with respect to development applications and the making of local environmental plans. The Minister may only make such an appointment if

- a council has failed to comply with its obligations under the planning legislation,
- a council's performance in planning and development matters is unsatisfactory,
- the ICAC recommends it because of serious corrupt conduct by any of the councillors, or
- the council agrees to the appointment

The Panels will consist of 3 to 5 members and will be appointed to exercise functions as set out in the order (eg deal with development applications for large scale development). The object of these reforms is to speed up the development application process where Councils are lagging behind. The Minister has said that these powers will only be exercised in ‘exceptional circumstances’

Special Infrastructure Contributions

The Minister, or a consent authority directed by the Minister, will be able to levy ‘special infrastructure contributions’ in ‘special contributions areas’ by conditions of development consents. Importantly, it will not be possible to appeal to the Land & Environment Court against the imposition of a special infrastructure contribution. The initial special contributions areas will be the north-west and south west Growth Centres. The contributions will be used to fund the capital or recurrent cost of public amenities or services, affordable housing, transport or other infrastructure, or environmental conservation in these areas. Such contributions will be able to be levied in addition to standard section 94 or 94A contributions.

Local Contributions Plans and Development Control Plans

The amendments allow the Minister to approve, amend or repeal a contributions plan. It will also allow the Minister to direct a council, or act in the place of a council, to make, amend or revoke a development control plan. These amendments are aimed at ensuring contributions plans and development control plans are made for proper purposes and, in the case of contributions plans, are consistent with special infrastructure contributions.

Redfern-Waterloo Authority

The Bill will amend the *Redfern-Waterloo Authority Act 2004* so that it clearly places local development, as well as Part 3A major projects, under the control of the Minister for the Authority (with the ability for the Minister delegate those functions to the Authority, members of staff of the Authority and the Council). The amendments will also allow the Minister to delegate responsibilities to consult with the Heritage Council to the Authority and members of staff of the Authority.

VICTORIA

Editor: Jennie Slatter

Draft Central Region Sustainable Water Strategy

The Draft Central Region Sustainable Water Strategy is a plan to secure water supplies for homes, business, industry, agriculture and the environment for the next 50 years.

It's aim is to secure water supplies for all users in the face of future pressures on the resource such as climate change, population growth, economic development and land use change. The Draft Strategy is an integrated approach to water resource planning. It considers all water sources including rivers, reservoirs, aquifers, as well as recycled water, storm water and seawater.

The Central Region covers an arc around Melbourne, including Geelong, Ballarat, the Macedon district and West Gippsland. It includes the Barwon, Moorabool, Werribee, Maribyrnong, Yarra, Bunyip, Thomson and Latrobe river catchments.

For further Information: Department of Sustainability and Environment's (DSE's) Customer Service Centre
Email: customer.service@dse.vic.gov.au

New Waste Management Policy (Used Packaging Materials)

A new Waste Management Policy (Used Packaging Materials) was published in March 2006. The new policy implements the requirements of the National Environment Protection Measure (NEPM) (Used Packaging Materials) (2005) in Victoria. The policy follows the Environment Protection and Heritage Council's (EPHC's) endorsement of strengthened National Packaging Covenant arrangements in July 2005. The new policy provides a regulatory safety net to signatories to the voluntary Covenant arrangements. The policy targets 'brand owners' setting out individual recovery targets for used packaging and annual reporting obligations. The policy will be enforced by the EPA.