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Environmental Policy and Support Services
EPA Tasmania
Department of Primary Industries, Parks, Water and Environment
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Draft Environmental Management and Pollution Control (Smoke) Regulations 2017

Thank you for the opportunity to provide input on the Regulations and Regulatory Impact Statement. The Local Government Association of Tasmania (LGAT / the Association) is incorporated under the Local Government Act 1993 and is the representative body for Local Government in Tasmania.

The objectives of LGAT are to:

- protect and represent the interests and rights of Councils in Tasmania;
- promote an efficient and effective system of Local Government in Tasmania; and
- provide services to Members, councillors and employees of Councils.

LGAT fully supports those councils that have made their own submissions to the consultation process. Where a council has made a direct submission to this process, any omission of these specific council comments in the LGAT submission should not be viewed as lack of support by the Association for that specific issue.

All councils that responded (10 in total) were supportive of the proposed Environmental Management and Pollution Control (Smoke) Regulations 2017 and particularly appreciative of the consultation processes that have taken place prior to the drafting of these changes. A number of councils made specific comments. These can be found in Appendix 1.

I hope this information is helpful in finalising changes to the proposed Regulations. Please feel free to contact Penny Finlay at penny.finlay@lgat.tas.gov.au for further information.

Yours sincerely



Dion Lester
POLICY DIRECTOR

APPENDIX 1 General Comments

Enforceability

The legislation needs to allow Council officers to deal efficiently with queries and complaints. The proposed Regulations maintain a prescriptive approach that does not cater well for the dynamic environment and practicality of regulatory compliance.

Prescriptive provisions do not make for practical regulation, for example:

- During the winter months when complaints are typically received, lighting and overcast conditions make gathering evidence using tools such as digital cameras difficult;
- Climatic conditions and wind direction impact the dispersal of smoke in the atmosphere. As smoke rarely travels in a horizontal direction, Council officers investigating complaints have a burden of proof of demonstrating smoke has travelled 10 meters - not 9.9 meters or anything less.
- Most complaints council receives are that smoke is detectible inside a neighbouring dwelling.

The proposed Regulations should reflect what the issues are, for example, classifying smoke emissions as non-compliant if they escape a property boundary and can be detected inside a neighbouring residential dwelling.

Both the current *Environmental Management and Pollution Control (Distributed Atmospheric Emissions) Regulations 2007*, and the proposed Regulations use distance criteria, in part, to define non-compliant wood smoke emissions. Specifically, section 7 of the proposed Regulations defines wood smoke emissions to be non-compliant, if in part, they are visible at a distance of 10 metres or more from the point they originate.

The proposed Regulations could include more attention to alternatives. In recent years, environmental and public health legislation in Tasmania has shifted from a prescriptive format to performance-based approach.

Education

Raising awareness of the laws around smoke nuisance through education programs is a welcome addition to changes in the Regulations. Warning letters that include advice and information about how to avoid causing a smoke nuisance, has proved extremely effective at resolving concerns as complaints lodged about wood heater smoke have steadily dropped over the last five years.

Fact sheets to raise community awareness of the new regulations should include information on the burning of green waste and include that it should be allowed to "dry" for as long as practical/possible before disposal by burning, to minimize the impact of smoke and odour on neighbouring properties. Odour from burning affects people on neighbouring properties, especially in residential areas.

Industry Guidelines

Alongside the implementation of the Regulations, the EPA could work with the industry group to provide a guideline that will improve wood heaters. For example, the regulations do not address the situation where wood heaters are installed close to an upslope house and therefore factors such as the location, length and height of the flue also influence smoke dispersion.

This can arise when a wood heater has been installed correctly and complies with the current Regulations and Australian Standard, however still causes a nuisance. An example is industry developed installation guidelines that improved noise from heat pumps.

Backyard burning

It is hoped the proposed Regulations, particularly the increased area limitation for backyard burning, will help to reduce smoke impacts from this emission source. It is suggested that the application for a permit for backyard burning include a by-law exemption obtained from Council and obtain a permit from Tasmania Fire Service (where a person is in a residential area and if within the fire permit period). This ensures that any burn is assessed from a fire reduction/risk perspective and from a common law nuisance perspective.

A Tasmania Fire Service permit should not be a full exemption as the Fire Service does not have the expertise to assess a permit in relation to nuisance provisions and common law nuisance. In the event an investigation was to take place on the basis of a complaint in which TAS Fire had issued a permit and if the complaint was to proceed, the issuing authority would be required to be summonsed to court, and advise how they assessed the permit with regard to nuisance.

The terms 'otherwise lawful' including a Fire Permit should be reviewed unless this takes into consideration environmental nuisance specifically. The permits need to be complimentary with intent in terms of fire safety (& the relevant TFS criteria) and public health. The Regulatory Impact Statement acknowledges this issue stating that "...Fire Service permits focus on the fire hazard aspect of green waste and may be issued without conditions relating to environmental amenity".

Specific Comments

Regulation	Comment (suggestions in italics)
1 (3) Definitions	<p>Does 'domestic waste' and 'green waste' include standing vegetation? If 'domestic waste' and 'green waste' were removed and the Regulations referred to 'burning on land....' would the same outcomes be achieved? Otherwise consider including:</p> <ul style="list-style-type: none"> • domestic waste "means any-----residential premises; <i>Such as paper, cardboard, unpainted timber etc, but does not include kitchen waste.</i> • green waste "means any-----cuttings; <i>including bushes or trees.</i> • <i>a definition of "kitchen waste".</i> • prohibited waste "means (f)"timber treated-----<i>(PCP); or other forms of treatment whether legal/approved or not and (j) oil; or other items such as containers, rags, cloths etc. that may contain residue of some of these items (paint, oils, chemicals etc)</i> <p>Are fuel reduction burns covered in the current draft regulation (i.e. standing vegetation or non-cuttings)?</p>

9	A setback may be a beneficial inclusion for properties who are permitted to burn eg – (a) from a dwelling not on the property or (b) a property boundary/fence line. Nominal distances that may be applicable could be (a) 50m and (b) 10m (not tested).
10(1)	<p>Wording is ambiguous and may need review to ensure clarity. Whilst the RIS is clear, is the intent that on land >4,000 sqm, you cannot burn without a permit, EPN etc? It appears that there are greater restrictions on land >4000sqm that <4000 sqm.</p> <ul style="list-style-type: none"> • Include “a minimum setback distance ought to still be required regardless of the area of land available” and “ a minimum of 150-200 m setback from any adjoining dwelling or property boundary is required for a person to burn legally”.