

31 October 2019

EPA Victoria
Attention: Director of Policy and Regulation
GPO Box 4395
Melbourne
Victoria 3001

Via email: sublegreform@epa.vic.gov.au

Dear Sir/Madam

PROPOSED EPA REGULATIONS AND ENVIRONMENT REFERENCE STANDARDS

The Construction Material Processors Association (CMPA) is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2017/18, the sector supplied 58 million tonnes of construction materials to the market, at a value of approximately \$948 million. Small to medium quarries account for approximately half of this production.

Thank you for the opportunity to comment on the proposed EPA regulations and environment reference standards (ERS).

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria. One of the roles of CMPA has been to assist the extractive industry to take a preventative approach to environment protection through the development of Guidelines for Noise Management and Dust Management with EPA input through workshops. A CMPA workshop (21 November 2019), including a presenter from EPA, will eventually result in a Guideline for Water Management in the extractive Industry being produced. The CMPA would like to thank EPA for their contributions to date.

It is noted that the documentation provided is ~1000 pages. Whilst this may amount to a very thorough examination of the proposed regulations (Regulations) and ERS, it is too long to give it justice in the consultation period allowed.

DISCUSSION

EPA Regulations and Regulatory Impact Statement (RIS)

The RIS considers 10 specific problem areas:

- Permissions (licences, permits and registrations);
- On-site wastewater management systems (septic tank systems);
- Contaminated Land;
- Waste;
- Litter;
- Plastic bags;
- Air;
- Water;
- Noise; and
- Vehicle emissions.

However, a full cost benefit analysis was undertaken for only one of the problem areas: Permissions.

ERS and Impact Assessment (IA)

It appears with the ERS it is mostly a change in terminology (as per IA table 1.) and “*adopt relevant standards from current statutory policies*” in the most part. However, the additional adoption of “*...new standards identified through current reviews, where these were sufficiently developed*” is of concern and is **not supported**, for example, the objective for noise in land use category V “*An acoustic quality that is conducive to human tranquillity and enjoyment having regard to the ambient natural soundscape.*”.

Table 1 - ERS and SEPP terminology

<i>Instrument</i>	<i>Term for a use, attribute or function of the environment</i>	<i>Term for the quality or substance used as a metric to assess the use, attribute or function</i>	<i>Term for the character, level, concentration or amount of an indicator used to assess the use, attribute or function</i>
<i>ERS</i>	<i>Environmental value</i>	<i>Indicator</i>	<i>Objective</i>
<i>SEPPs</i>	<i>Beneficial use</i>	<i>Environmental indicator</i>	<i>Environmental quality objective</i>

The ERS is a reference standard and does not provide for mandatory compliance requirements. However, the CMPA expects that the ERS will be given considerable weight in respect of certain decisions, such as during work plan and work plan variation approvals processes.

SUMMARY

The CMPA supports a practicable preventative approach to protection of human health and environment. However, the lengthy documents produced for the subordinate legislation, if an example of what is to come on 1 July 2020 when the EP Act 2017 (General Environmental Duty), the Regulations and ERS come into force, do not necessarily inspire confidence that a smooth transition will occur. An initial “period of grace” for industry together with an “assisting” mentality by experienced (in the new legislation) EPA staff will perhaps overcome this.

I would be happy to discuss our submission further at your invitation. Please see the specific comments below.

Yours sincerely



Dr Elizabeth Gibson
General Manager

Specific comments

Regulations RIS

Page number	RIS	Comments
p.7	<p>“...the EP Act 1970 was not meeting the community’s expectations, particularly in light of major trends and emerging challenges such as:</p> <ul style="list-style-type: none"> • <i>“The changing economy including the transition from a manufacturing to service-based economy.</i> • <i>Rapid population growth and urbanisation.</i> • <i>The changing environment.</i> • <i>Technological change.”</i> 	A question that should be considered by all Governments in Australia is whether there is a correlation between the transition from a manufacturing to service – based economy and the proliferation of red-tape/regulatory burden. An acceptance of the status quo (decline in manufacturing) is not necessarily a positive benefit to the Australian economy when consideration is given to, for example, self-reliance and exporting capability.
p.9 1 st para	<p><i>“Establishing the GED shifts pollution and waste management in Victoria from a more ‘reactive’ framework to a ‘preventative’ framework, which will</i></p>	A preventative practicable framework is supported.

	<i>require duty holders to take all reasonable steps to minimise the risk of harm to the environment from waste generation activities and to avoid or minimise pollution so far as reasonably practicable.”</i>	
p.9 4th para	<i>“most existing subordinate legislation under the EP Act 1970 will cease to operate when the new EP legislation takes effect, meaning that some of the proposed regulations will address specific risks that are currently the focus of these outgoing instruments.”</i>	The proposed transition could be improved through consultation, education and training with the extractive industry and relevant consultants to allow a seamless process. A focus should also be on assisting the extractive industry to fulfil its requirements under the new Environment Protection (EP) Act 2017 and subordinate legislation.
p.10 2nd para	<i>“Costs incurred as a result of waste and pollution can be significant. For example, the costs of the Hazelwood mine fire are estimated to have exceeded \$100 million.”</i>	The extractive industry has a much lower and different risk profile to mines, for example, over the past 20 years only \$20K has been spent by Government on rehabilitation of a quarry and so should be considered separately.
p.10 6th para	<i>“Over 40 separate Acts cover environmental regulation in Victoria. These instruments will continue to exist once when the EPA Act 1970 ceases to operate and the new EP legislation commences (intended to commence effect on 1 July 2020).”</i>	Whilst environment protection is well understood, red-tape and regulatory burden lead to high cost to industry especially small to medium businesses/quarries who are struggling to stay in the market. Unfortunately, the EP Act and subordinate legislation fails to provide clarity or streamline environmental regulation in Victoria.
p.18 3rd bold dot point	<ul style="list-style-type: none"> <i>“Existing licence holders will automatically be taken to hold a ‘new’ licence for the relevant operating licence activity and will not need to reapply. Their licences will remain perpetual to and will not become time bound licences.”</i> 	This statement is supported.

ERS Impact Assessment

Page number	Impact assessment	Comments
p.13 2 nd para	<i>“Due to the short timeframe to prepare the proposed ERS, and the range of periods since existing environmental standards were last reviewed, it was determined that the proposed ERS would adopt relevant standards from current statutory</i>	This approach appears logical and is supported where standards are adopted from relevant current statutory policies.

	<i>policies, or new standards identified through current reviews, where these were sufficiently developed.”</i>	
p.16	<p><i>“Environmental values</i></p> <ul style="list-style-type: none"> • <i>Child learning and development;</i> • <i>Human tranquillity and enjoyment in natural areas”</i> <p><i>“Objective</i> <i>An acoustic quality that is conducive to human tranquillity and enjoyment having regard to the ambient natural soundscape.”</i></p> <p><i>“Land use category V, general description</i> <i>Unique combinations of landscape, biodiversity and geodiversity. These natural areas typically provide undisturbed species habitat and are frequently called the ‘country’ because they enable people to see and interact with native vegetation and wildlife.”</i></p>	<p>The proposed additional environmental values for noise are noted. In particular, <i>“human tranquillity and enjoyment in natural areas”</i> is of concern.</p> <p>The indicator is qualitative and so open to wide interpretation under the objective (opposite).</p> <p>The general description (opposite) of the land use category for the above objective is very broad and also open to wide interpretation. Given that extractive industries are located throughout Victoria, it is more than likely to have a detrimental effect on the regulatory approvals process and the industry itself. The impact assessment does not take into account the increased cost to the extractive industry. This environmental value, which may be considered commendable in some areas, is not supported.</p>