

Environmental Protection (Composting Facilities) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 126

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Composting Facilities) Amendment Regulation 2024.

Authorising law

Section 580 of the *Environmental Protection Act 1994*.

Policy objectives and the reasons for them

The primary objective of the *Environmental Protection (Composting Facilities) Amendment Regulation 2024* (the Amendment Regulation) is to amend the *Environmental Protection Regulation 2019* (EP Regulation) to address odour issues relating to composting facilities, particularly those which are near residential premises. In particular, the Amendment Regulation prescribes enclosed or in-vessel systems as the plant and equipment to be used when carrying out organic material processing using odorous feedstock within four kilometres of a residential zone.

Amendments are also made to ensure transportation of interstate waste is aligned with *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998 (Cwlth)* (Waste NEPM) and introduce an offence for operators who are not required to have an environmental authority (EA) (e.g. interstate waste transporters) to ensure that waste only goes to a receiver who is authorised to treat the feedstock.

Achievement of policy objectives

The policy objectives will be achieved by amending the EP Regulation to:

- require the environmental regulator to specifically consider whether to impose a condition that prohibits a new or expanded composting facility from receiving odorous feedstock or require the facility to only use in-vessel or enclosed processing for that feedstock, if it is located near (within four kilometres) of a residential area;
- create an additional ground for the environmental regulator to issue a Notice of Proposed Amendment (NOPA) to an existing composting facility if it is within four kilometres of a residential area and accepting odorous feedstock. This could allow the environmental regulator to require the facility to only use in-vessel or enclosed processing for that feedstock if it is considered necessary or desirable;
- require the environmental regulator to refuse an application for a consignment authorisation to a waste transporter if the receiving facility is not licensed to receive the waste and/or not meeting environmental standards (i.e. this will allow consignment applications to be refused if they are transporting odorous feedstock to a facility that is not authorised to receive that waste, for example, because the composting facility's EA has been amended to specify that the facility cannot receive odorous waste until they have an in-vessel or enclosed system in place); and
- define odorous feedstock in Schedule 18A of the EP Regulation, which includes materials such as abattoir waste, acid sulphate soils and sludge, animal manure, biosolids, grease trap waste, and protein based food organics.

Assessment of applications for new or expanded composting activities

Some composting facilities currently receive wastes which are highly odorous and have the potential to cause serious or material environmental harm unless appropriate management measures are in place. Such wastes include liquid food processing waste, sewage and animal effluent, grease trap waste, and abattoir waste. Historical approvals and urban encroachment or intensification have contributed to community concerns regarding odour from composting operations, particularly in the Ipswich area.

In assessing a site-specific or major amendment application for an EA, the environmental regulator (called the “administering authority” in the *Environmental Protection Act 1994* (EP Act) and its subordinate legislation) is required to comply with any regulatory requirements. These are set out in the EP Regulation and include specific requirements for particular types of activities or impacts.

For new or expanded operations, under the new section 41AC, the Amendment Regulation will require the environmental regulator to consider imposing a condition on a composting facility within four kilometres of a residential area which either:

- limits the facility to only receiving feedstock which is not defined as odorous feedstock (e.g. garden waste, cardboard and paper waste, and non-protein based food waste); or
- requires the facility to only process the odorous feedstock in enclosed or in-vessel systems.

Amendment of existing environmental authorities

For existing EAs, a new ground is provided under the new section 186B for the environmental regulator to trigger an amendment to the existing EA conditions in circumstances where the activities are carried out within four kilometres of a residential area and the environmental regulator believes the activity is or may be carried out at any time using odorous feedstock.

Under this process, a NOPA can be issued by the environmental regulator, which specifies:

- the amendment to the EA being proposed;
- the grounds for the amendment; and
- that the EA holder may make written representations to show why the proposed amendment should not be made.

The environmental regulator must consider these representations in making its final decision about the amendment to the EA. It is important to note that this decision is subject to review and appeal.

The Amendment Regulation will provide a more certain ground for reviewing EA conditions as it makes it clear that enclosed or in-vessel processing of odorous feedstock is the expected standard near residential areas. However, the regulator will still need to demonstrate that the proposed conditions are necessary or desirable.

Regulated waste transport

The Amendment Regulation also amends the process for approving consignment authorisations. Regulated waste transport may be intrastate, in which case, the transporter is required to hold an EA (ERA 57) and is subject to conditions that waste can only be removed from the vehicle at a facility that can lawfully accept the waste (e.g. condition (W2b) of the standard conditions).

However, interstate waste transporters do not require an EA issued under the EP Act in Queensland. Rather, the transporter is required to be licensed in their own State and to obtain a consignment authorisation in order to achieve the requirements of the nationally agreed legislation (the Waste NEPM) and the Agreement between agencies for implementation of the Waste NEPM (the Agreement).

Under the Agreement, jurisdictions agree to the mutual recognition of waste transport licences and to act in good faith to implement the Waste NEPM which provides the basis for ensuring that waste transported between states is handled in ways which are consistent with environmentally sound practices. This is largely done through waste tracking and consignment authorisations for waste which is transported interstate.

Under the existing EP Regulation, the environmental regulator has limited grounds to refuse an application for a consignment authorisation if the receiver is authorised to accept the waste. This means large quantities of odorous feedstock cannot be prevented from going to any waste facility in Queensland. As the amendments for composting facilities mean that some facilities will be licensed to receive odorous waste and some will not, the Amendment Regulation progresses updates to the consignment authorisation process to take account of the change.

Other amendments

The Amendment Regulation also makes a minor or administrative amendment to correct a cross-referencing error.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the EP Act, which is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Administrative changes may achieve some of the policy objectives. However, without legislative amendments, progress will be significantly slower and unacceptable environmental impacts could continue to negatively affect nearby communities. Accordingly, to fully achieve the policy objectives, legislative amendments are required.

Benefits and costs of implementation

In accordance with *The Queensland Government Better Regulation Policy*, a Summary Impact Analysis Statement (IAS) was prepared in relation to the regulatory proposal and is published on the Department of Environment, Science and Innovation's website.

The IAS determined that the proposal is necessary and effective and generates the greatest net benefit to the community. While there are some impacts to business which are required to enclose their operations, the proposal merely prescribes the existing best practice management standard, so the making of the regulation does not impose significant costs to business. No further regulatory impact analysis is required.

Consistency with fundamental legislative principles

The proposed legislation is consistent with fundamental legislative principles.

The Amendment Regulation does not adversely affect rights and liberties, or impose obligations, retrospectively. All provisions can only be enforced after the EP Regulation has been amended so does not operate retrospectively. Any composting facilities that are currently operating lawfully will be able to continue to operate lawfully until the administering authority triggers an amendment process using the grounds prescribed in new section 186B.

The Amendment Regulation also contains a transitional provision to ensure that applications for an EA for a composting facility will continue to be assessed under the pre-amended regulation if the application has reached the decision stage in the EA application process. This

ensures that applications will not be unduly delayed because of the Amendment Regulation being made.

The Amendment Regulation has sufficient regard for the institution of Parliament as it is within the power that, under the EP Act, allows subordinate legislation to be made. Section 215(2)(s) of the EP Act provides the head of power to prescribe circumstances to amend an EA in the EP Regulation in the new section 186B. Section 580 of the EP Act provides that a regulation may be made about multiple different matters, including the standards and controls for treatment of waste, the types of plant or equipment that may be used for environmentally relevant activities, and the way in which the plant or equipment is to be installed, operated and maintained. Section 580 of the Act also allows a regulation to be made to give effect to a NEPM.

Consultation

Consultation with composting facility operators and the community on the proposed amendments has been undertaken via an online survey, information sessions for industry and the community, and social media engagement.

A summary of consultation has been provided in the IAS. Results from the consultation showed that:

- a majority of community members generally supported stronger regulation of composting facilities to manage odour impacts; and
- industry and local government stakeholder views were mixed, but still mostly in favour of stronger regulation.

The Office of Best Practice Regulation was notified of the proposal.

Notes on provisions

Short Title

Clause 1 states that the short title is the *Environmental Protection (Composting Facilities) Amendment Regulation 2024*.

Regulation amended

Clause 2 provides that *Environmental Protection (Composting Facilities) Amendment Regulation 2024* amends the *Environmental Protection Regulation 2019*.

Insertion of new ch 3, pt 5

Clause 3 introduces a new part to include the new section 29A which prescribes specific types of plant or equipment to be used for organic material processing (noting that the term ‘organic material processing’ is defined in the Dictionary to be the prescribed environmentally relevant activity (ERA) in schedule 2, section 53 – i.e. ERA 53).

The new section 29A is made under section 580 of the EP Act which, amongst other things, allows a regulation to be made about:

- the types of plant or equipment that may be used for environmentally relevant activities (ERAs) and the way in which the plant or equipment is to be installed, operated and maintained; and
- the standards, controls or procedures for the manufacture, generation, sale, use, transportation, storage, treatment or disposal of a contaminant, including waste.

Under the new section 29A, composting facilities carrying out organic material processing within four kilometres of a residential area and that use odorous feedstock in their operations must use the prescribed plant or equipment. The prescribed plant or equipment for organic material in the described circumstances are as follows:

- an enclosed system for receiving, storing and initially mixing the odorous feedstock; and
- an enclosed and/or in-vessel system for composting the odorous feedstock.

Odorous feedstock is defined under schedule 18A (see Clause 11).

Enclosed and in-vessel systems have previously been defined in administrative documentation and the intention is not to change those definitions but to prescribe them in the EP Regulation. An enclosed system is defined as being a system where negative pressure is used in a building (or part of a building), while an in-vessel system is one where the composting material is both covered or contained (e.g. in a vertical silo, drum, box or similar container) and is composted in a way that captures, filters or otherwise controls the release of gases.

For both an in-vessel and enclosed system, it is intended that the new provisions set the standard that the system is designed, operated, and maintained such that the adverse effects of odour (i.e. through the release of gases) are prevented or minimised.

Additionally, section 29A specifies that the plant or equipment that must be used where a facility is within four kilometres of a residential area and using odorous feedstock does not include systems that are primarily comprised of semi-permeable membranes (e.g. GORE-TEX cover or other forms of covered aerated pile composting), as a system of this nature does not adequately prevent or minimise the adverse effects of odour.

Further information about how these systems would be conditioned on an EA is available in the Department of Environment, Science and Innovation's model operating conditions and the Best Practice Environmental Management Guideline for ERA 53(a) – both of which are available on the department's website.

Insertion of new s 41AC

Clause 4 introduces a new regulatory requirement for organic material processing (which is defined in the Dictionary to be the prescribed environmentally relevant activity (ERA) under schedule 2, section 53 – i.e. ERA 53).

This provision means that environmental management decisions made for ERA 53(a) that are occurring within four kilometres of a residential zone will be subject to additional regulatory requirements. This includes decisions made by the administering authority which relate to new and expanded environmental authorities (EAs).

The administering authority must consider whether to impose either of the listed conditions on the EA for ERA 53(a) activities that are occurring in these circumstances. The listed conditions relate to the use of odorous feedstock and would require that:

- the activity must be undertaken without using odorous feedstock; or
- if odorous feedstock is used, it must be carried out as prescribed in section 29A(2)(a) and (b) i.e. using either or both of an in-vessel or enclosed system.

The intent of this provision is to allow the administering authority to ensure that conditions on an EA for ERA 53(a) are commensurate to the level of odour risk associated with certain composting activities.

Amendment of s 93 (Consignment numbers for waste transported into Queensland)

Clause 5 amends section 93 to clarify the decisions available to the administering executive under section 93 with regards to consignment numbers.

To remove doubt and provide additional protection from odour impacts, section 93 has been amended to require the administering executive to refuse an application for a consignment number unless satisfied that the receiver holds and is acting under the appropriate licence. This goes beyond merely holding an EA for the relevant ERA (e.g. ERA 53(a) for organic material); the conditions of the EA must allow for the receiver to receive that particular waste (e.g. composting facilities receiving odorous feedstock). The amendment also means that a consignment number application can be approved with or without conditions. The new ability to impose conditions on a consignment number application aims to further prevent or minimise the odour impacts from the transportation and delivery of odorous feedstock.

While consignment authorisations only apply to waste transported into Queensland, similar requirements are not needed for operators who transport regulated waste within Queensland because:

1. Operators within Queensland are required to hold an EA under ERA 57; and
2. EAs for ERA 57 already include a condition which prohibits the transporter from removing the waste from their vehicle at a facility which cannot lawfully accept the waste.

Consequently, these changes ensure that consignment authorisations achieve the objective of the nationally consistent laws for interstate waste transport (the Waste NEPM) and that Queensland waste transporters are not unfairly burdened, compared with transporters who are only licensed in other states.

The provision also notes that under section 429(2) of the EP Act, a reference to an environmental authority in this provision includes a reference to an equivalent interstate licence.

Insertion of new s 93A

Clause 6 inserts a new section 93A (Additional responsibility of transporter of odorous feedstock) which imposes a responsibility on the transporters of odorous feedstock who do not hold or who are not acting under an EA issued under the EP Act. The new provision means that in giving odorous feedstock to a receiving facility, the transporter must ensure the composting facility receiving the odorous feedstock is properly licenced and conditioned to use odorous feedstock. Where the transporter does not ensure the receiving facility is properly licenced for odorous feedstock, an offence has been introduced with a maximum penalty of 20 penalty units.

This section applies to any transporters of trackable waste which is odorous feedstock which is not regulated by an EA issued under the EP Act. This includes both interstate waste, and transporting quantities of regulated waste which are under the threshold of ERA 57. The provisions of section 429 of the EP Act do not apply to this section.

Amendment of s 144 (Original decisions and dissatisfied persons—Act, s 519)

Clause 7 clarifies that original decisions under the EP Regulation now include a decision to impose a condition on the approval of a consignment number (section 93).

The provision that a decision to refuse an application for a consignment number under section 93 is an original decision under the EP Act has been relocated to section 144(1)(a)(iv).

This means that these decisions are subject to the review and appeal provisions in Chapter 11, part 3 of the EP Act.

Amendment of s 186A (Prescribed circumstances for amending environmental authorities—Act, s 215)

Clause 8 makes amendments to section 186A of the EP Regulation to make two minor drafting amendments to s 186:

- the heading is amended to refer to the specific ERA (ERA 50 – mineral and bulk material handling); and
- the reference to s 215(2)(r) is replaced with a reference to s 215(2)(s), to correct a drafting error.

Insertion of new s 186B

Clause 9 inserts new section 186B (Circumstances for amending environmental authority for organic material processing—Act, s 215) to prescribe a further circumstance to amend an EA under section 215(2) of the EP Act. Under section 215(2) of the EP Act, an EA can be amended by the administering authority for a range of circumstances. Section 215(2)(s) allows for other grounds to amend an EA to be prescribed by regulation.

The insertion of section 186B allows the administering authority to amend an EA for organic material processing (i.e. ERA 53(a)) where the activity is occurring within four kilometres of a residential zone, the activity uses or may use odorous feedstock, and the EA for the activity does not already include a condition that the activity must be carried out in the way described in section 29A(2)(a) and (b).

Odorous feedstock is those materials which carry a high or very high risk of causing environmental harm relating to odour. The government has determined the materials which meet this threshold and prescribed them in the new schedule 18A (see Clause 11 below).

Amending existing EAs to ensure operators are conditioned appropriately for their location and the feedstock used is necessary to ensure that composting facilities are meeting best practice standards and to ensure that odour emissions do not impact nearby residents. The existing process for a notice of proposed amendment (NOPA) would apply, so that the EAs for existing operators are not changed without due process.

Processing odorous feedstock has risks in that it may cause odour related environmental harm. These risks can be mitigated by only processing this feedstock within an enclosed or in-vessel system. Tying the ability to amend the EA to the location of the activity and the use of odorous feedstock provides a more certain ground for the NOPA process that the administering authority can use to require the operator to either upgrade their plant and equipment to process odorous feedstock, or cease receiving or processing odorous feedstock.

Insertion of new ch 11, pt 9

Clause 10 inserts a transitional provision applying to EA applications for ERA 53(a). The transitional provision states that applications that have reached the decision stage prior to the commencement of the regulation will continue the application process under the EP Act under the pre-amended regulation.

Insertion of new schedule 18A

Clause 11 inserts Schedule 18A (Odorous feedstock) to prescribe a list of organic material that the government considers to be odorous feedstock for composting activities under ERA 53(a).

The materials defined in Schedule 18A as odorous are derived from the high and very high odour risk ratings set out in Schedule 1 of the current Model Operating Conditions for ERA 53(a) – Organic material processing by composting (ESR/2015/1665, Version 4.02).

Amendment of sch 19 (Dictionary)

Clause 12 amends schedule 19 of the EP Regulation, the dictionary, to insert the definition for odorous feedstock in reference to Schedule 18A (see Clause 11).

A list of odorous feedstocks is prescribed in Schedule 18A of the Amended Regulation.

The dictionary is also amended to include a definition of ‘organic material processing’, which is defined to be the prescribed environmentally relevant activity (ERA) in schedule 2, section 53 – i.e. ERA 53.

A definition for residential zone is also inserted and has the same meaning it has under the *Planning Regulation 2017*. A residential zone means premises (however described) designated in a local categorising instrument as residential. Examples of ways of describing premises—general residential, low density, low-medium density, medium density or high density residential, character residential or tourist accommodation.

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