



Environment Protection Authority

Consultation Report – Clean Air Regulation

Draft Protection of the Environment Operations (Clean Air) Regulation 2022



© 2022 State of NSW and the NSW Environment Protection Authority

The EPA has compiled this report in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs.

Every effort has been made to ensure that the information in this document is accurate at the time of publication. However, as appropriate, readers should obtain independent advice before making any decision based on this information.

The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication.

The EPA asserts the right to be attributed as author of the original material in the following manner: © State of New South Wales and the NSW Environment Protection Authority 2022.

Published by:

NSW Environment Protection Authority

4 6 Parramatta Square

10 Darcy Street, Parramatta NSW 2150

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publications requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask
for 131 555

Speak and listen users:

phone 1300 555 727, then ask for 131 555

Email: info@epa.nsw.gov.au

Website: www.epa.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@epa.nsw.gov.au

See also www.epa.nsw.gov.au

EPA 2022P4087

December 2022

Contents

1. What the consultation covered	3
What were the documents?	3
What was the consultation process?	3
2. Consultation feedback results	4
Who did we hear from?	4
3. The EPA's response to issues raised through the consultation	5

1. What the consultation covered

The Protection of the Environment Operations (Clean Air) Regulation 2021 (2021 Regulation) is the main set of detailed laws controlling air pollution in NSW. It controls the emission of pollutants from industry, motor vehicles and motor vehicle fuels, wood heaters and backyard burning. The Regulation supports the *Protection of the Environment Operations Act 1997* which sets the statutory framework for managing air quality in NSW.

After reviewing the latest environment and health research, current technologies, environmental practice, regulations and emission standards in other Australian jurisdictions and evolving community and stakeholder concerns, the EPA is updating the Regulation to make it more current and relevant.

The EPA released a draft Regulation and a Regulatory Impact Statement (RIS) for public consultation and sought views and feedback on them.

This document provides a summary of key issues raised by stakeholders during public consultation on the draft Regulation and RIS, and the EPA's response.

What were the documents?

The draft **Protection of the Environment Operations (Clean Air) Regulation 2022** contained proposed changes to the 2021 Regulation. Key changes included:

- requiring older activities and plant – which started operating or were upgraded between 1979 and 1997 – to comply with more stringent air emission standards to create a level playing field
- stricter emission limits and controls for volatile organic liquids in storage tanks, loading plant and tank vehicles
- requiring cleaner, lower volatility petrol to be supplied for an extra month over summer to reduce ozone
- restructuring the Regulation and using plain language to improve understanding and removing or harmonising provisions that are duplicated, outdated or obsolete to reduce administrative burden.

The **Regulatory Impact Statement (RIS)** outlined how possible impacts of the proposed changes to the Regulation have been assessed. The RIS considered different options for addressing identified air pollution problems, outlined the economic and social costs and benefits of those options, and indicated the most effective option.

What was the consultation process?

The consultation was open for 4 weeks, from 6 May until 3 June 2022. Stakeholders were invited to provide feedback by survey responses on the EPA's Have Your Say website and by email to the EPA's Air Policy mailbox.

During the consultation the EPA:

- invited feedback from over 2,000 stakeholders, including EPA licence holders, industry and industry associations, local councils, environmental, health and community groups, scientific and academic organisations and other government agencies
- advertised the consultation in the NSW Government Gazette and newspapers, as required by the *Subordinate Legislation Act 1989*, and via the EPA's social media and newsletters of Local Government NSW and Clean Air Society of Australia and New Zealand.

2. Consultation feedback results

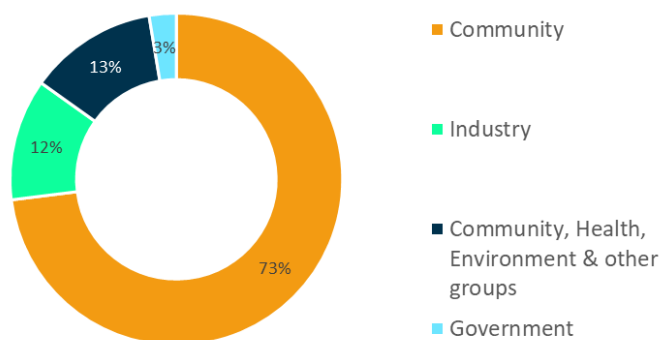
Who did we hear from?

The EPA received submissions from 152 stakeholders comprising:

- 94 individual submissions
- 58 campaign submissions.

Stakeholder groups encouraged community feedback, with submissions received as part of three stakeholder group campaigns. These were in relation to wood heaters and power stations. Eleven stakeholders made more than one submission.

A breakdown of submissions by stakeholder type is presented below.



The key issues raised in submissions by frequency are shown in the Table 1. These issues are discussed in more detail in the next section.

Table 1 Frequency with which issues were raised

Frequency of issue	Key issues raised
High	Power station emissions, health impacts of air pollution and wood heater emissions
Medium	Industrial emissions (excluding power stations), open burning including recreational fires and other (for example, fuels and road tunnels)
Low	Volatile organic liquid storage and transfer, petrol volatility, coal mining emissions, air quality standards and vehicle emissions

3. The EPA's response to issues raised through the consultation

The EPA reviewed and considered all comments received in submissions and during stakeholder meetings on the draft Regulation and RIS. Comments relating to the changes proposed in the consultation draft of the Regulation have been summarised by each Part of the Regulation and categorised into key themes in Table 2. The frequency with which issues were raised for a particular Part of the Regulation has been ranked as follows:

- High – majority of comments for the Part raised the issue (more than 50%)
- Medium – moderate number of comments for the Part raised the issue (between 20% to 50%)
- Low – a few comments for the Part raised the issue (less than 20%).

The EPA's response is provided against each key issue and detailed in Table 2. Where appropriate, changes may be made to the consultation draft of the Regulation.

Some general comments made were outside the scope of the Regulation. These are summarised in Table 3.

Table 2 Summary of key issues raised, by Part of the Regulation

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Part 2 – Solid fuel heaters			
Regulation of wood heater emissions	High	The draft Regulation does not include options apart from 'business as usual' for wood heaters and therefore does not comply with the Better Regulation Principles. It is inadequate for protecting human health from wood smoke.	The RIS and supporting cost-benefit analysis were prepared by a specialist consultant in accordance with NSW Treasury guidelines. The NSW Clean Air Strategy 2021–2030 (Clean Air Strategy) is the whole-of-government approach to managing and improving air quality in NSW with actions to address wood heater emissions.
Restricting wood heater installation	High	Phase out or restrict wood heaters in new and existing homes, particularly in urban areas, including by requiring wood heaters to be removed when a home is sold.	Actions to address wood heater emissions are part of the Clean Air Strategy. No change as part of this remake.
Wood heater standards	Medium	Strengthen emission standards for new wood heaters and require compliance with installation standards.	The latest emission standards in the Regulation came into effect in 2019. No change as part of this remake.
Other wood heater control measures	Medium	Adopt other measures such as mandating the replacement of older wood heaters, public consultation on wood heater installations and licensing of wood heater ownership.	Actions to address wood heater emissions are part of the Clean Air Strategy. No change as part of this remake.

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Other comments and suggestions for addressing wood smoke	Medium	<ul style="list-style-type: none"> Transfer management of residential air pollution to the EPA. Fines for excessive smoke are inadequate to be a deterrent to improper wood burning. Replace section 135A, POEO Act definition of 'excessive smoke' with a quantitative measure of wood smoke pollution in a defined area around the emitter (for example, ug/m³ of PM_{2.5}) Allow video of wood heater smoke, including at night when it is otherwise difficult to observe wood smoke, as acceptable evidence of excessive smoke. 	Actions to address wood heater emissions are part of the Clean Air Strategy. No change as part of this remake.
Other heating devices	Low	The Regulation exempts or does not cover other heating sources that emit particles such as brick fireplaces and pellet heaters, and indoor or outdoor gas heaters.	Actions to address wood heater emissions are part of the Clean Air Strategy. No change as part of this remake.
Part 3 – Control of burning			
Fire pits and other recreational fires	High	The Regulation should restrict where recreational fires are/are not allowed (for example, not in urban areas) or the fire's size, duration and proximity to neighbours.	Noted and to be considered in any future policy development.
Burning of waste	Low	Consistency of regulatory controls for burning domestic waste and vegetation across NSW local governments. Burning of vegetation should be a last resort.	The Regulation enables local councils to choose a level of open burning management appropriate for their circumstances.
Cultural burning	Low	The Regulation should include an exemption for indigenous burning of vegetation for ceremonial purposes.	Noted and to be considered in future policy development.

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Part 4 – Motor vehicles			
Smoky vehicles	Low	The RIS analysis lacks rigour and doesn't consider the regulatory efficiency of the smoky vehicle provisions.	The RIS and supporting cost-benefit analysis were prepared by a specialist consultant in accordance with NSW Treasury guidelines.
Part 5 - Air impurities emitted from activities and plant			
Emission standards	High	Support stricter standards but some submissions suggested that proposed limits are not tight enough (for example, compared to European Union and United States limits) and should be health-based (for example, World Health Organization guidelines for ambient pollutants).	The emission standards in the Regulation reflect the reasonably available control technology for many pollutants and best available control technology for the most toxic air pollutants. The EPA frequently sets licence limits which are more stringent than the Regulation, where necessary, based on project specific circumstances.
	Low	Oppose stricter standards or propose alternative standard setting processes such as through licensing or pollution released per unit of production.	Noted and is not supported.
Transition period for meeting stricter emission standards	Medium	Community feedback is that the transition period is too long and industry should be required to meet the standards, or even tighter standards of a new Group 7, as quickly as possible given the health impacts of emissions and that the control technology already exists.	Noted and is not supported.
	Low	Community feedback mainly via the survey supports the proposed transition period for industry to meet Group 5 limits by 1 July 2025 and Group 6 limits by 1 July 2030.	Noted.

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
	Low	Industry submissions indicate the transition period is not long enough for industry to design pollution reduction measures, undertake feasibility studies, obtain planning and other approvals and procure and install control equipment. This may disrupt upgrade time frames dictated by business requirements (for example, plants reaching the end of their useful lives) and have unintended consequences for consumers due to operating disruptions and price impacts.	The transition period has been amended based on feedback received. Changes include modified time frames and reduced red tape for businesses that commit to tighter Group 6 standards or will close in the transition time frame.
Legacy condition	Medium	The Regulation should not give industry the ability to defer meeting stricter standards. Should the provision remain in the Regulation, to be fit-for-purpose, the application and assessment processes should include a more rigorous, independent health-based assessment of alternative standards and emission impacts, consider a range of possible pollution reduction programs and control equipment and require community consultation. Information should be provided at the outset of the process to enable the community time to review it and for the EPA to properly assess applications.	The Regulation allows for a robust and transparent process to set alternative emission limits on a case-by-case basis by way of conditions in environment protection licences and is clear on what the process requires.
	Low	Industry would like flexibility to meet tighter emission limits where needed, for example, where it is not economically feasible to upgrade plant. However, clarification is needed around application of the legacy condition provisions.	Noted.

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Emission standards for additional pollutants	Low	The Regulation should include standards for sulfur dioxide, mercury and greenhouse gases (carbon dioxide, methane).	The Regulation includes standards of concentration for sulfur dioxide and mercury for activities and plant used for specific purposes. In addition to limits for pollutants specified in the regulation, the EPA uses other measures including licence conditions to regulate a broad range of substances. The EPA has a draft Climate Change Policy and Climate Change Action Plan addressing greenhouse gases.
Industry costs	Low	Industry is concerned about the costs of meeting tighter emission limits and consistency of the proposed changes with other government policies.	<p>Transitioning older industry to tighter emission limits ensures a level playing field for all industry participants. Costs will vary for individual premises and will depend on which control technology they choose. It is up to industry to meet the emission limits in a cost-efficient manner.</p> <p>The changes to the transition period will have benefits for businesses transitioning to cleaner processes under other Government initiatives such as the NSW Net Zero Plan.</p>
Locomotive emissions	Low	Clarification of whether the Regulation captures diesel locomotives as 'plant' to which emission standards apply.	Rolling stock operations are not intended to be included in Part 5 of the Regulation. The Regulation has been updated and rolling stock operations are managed through environment protection licences.
Parts 6 and 7 – Volatile organic liquids			
Geographic area in which controls apply	High	Support expanding controls for the storage and transfer of volatile organic liquids to the greater Newcastle and Wollongong metropolitan areas (to align with the Stage 1 vapour recovery zone).	Noted.
Emission controls for storage tanks, loading plant and tank vehicles	High	Support tighter emission limits, regardless of age of tanks, plant and vehicles.	Noted.

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Transition period for meeting stricter emission standards	Medium	<ul style="list-style-type: none"> Community feedback is that the transition period is too long and industry should meet the requirements as quickly as possible. 	Noted and is not supported.
	Low	<p>Community feedback mainly via the survey supports the proposed transition period:</p> <ul style="list-style-type: none"> 2024 to 2027 for new tanks, loading plant and tank vehicles the next major scheduled maintenance or 2027 to 2030 for existing tanks, loading plant and tank vehicles. 	Noted.
	Low	Industry submissions indicate the transition period is not long enough.	Noted and is not supported.
Costs of meeting stricter emission standards	Low	The RIS underestimates the costs to industry of meeting the new control requirements.	Noted and stakeholder misunderstanding about the new control requirements have been clarified with the relevant stakeholders.
Part 8 – Petrol			
Extending the summer petrol volatility period	High	Support extending the period from 15 November – 15 March to 1 November – 31 March.	Noted.
	Low	Industry supports extending the period in principle but is concerned that the costs to industry are higher than are estimated in the RIS and the extension may create supply sourcing issues that could affect fuel supply security. Domestic supply assumptions in the RIS are incorrect. Suggest the provisions apply from 2023 to give industry time to schedule supply.	<p>The start of implementation for the extended summer period is delayed to 1 November 2023 to ensure industry can manage supply agreements for cleaner petrol.</p> <p>The cost-benefit analysis includes sensitivity analyses that considered a range of cost scenarios.</p>

Topic	Frequency issue raised	Summary of key issues raised	EPA response/changes to draft Regulation
Further extending summer petrol volatility control requirements	Low	<p>Implement further controls on petrol volatility including:</p> <ul style="list-style-type: none"> • a longer low volatility period both sides of the proposed 1 November - 31 March period or all year round • extending the requirements to all of NSW • reducing the volatility limit to 60 kilopascals. 	The extension of the summer petrol volatility period will align with the period and locations in which higher levels of ozone are occurring.
Part 9 – Sulfur in liquid fuel			
Shipping fuel	Low	Vessels operating in waterways in the Greater Metropolitan Region should be required to use 10ppm sulfur fuel rather than the 0.5% requirement that applies under the International Maritime Organization regulations.	The Australian Government is responsible for managing air emissions from shipping through the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i> (Cwlth).

Issues raised that are not addressed by the Clean Air Regulation are provided in Table 3. These issues are noted for Government consideration and may be addressed through other regulations, strategies, policies, plans and guidance.

Table 3 Out-of-scope issues

Topic	Summary of issues raised
Health impacts	Concerns about health impacts of air pollution including lung and heart disease, asthma and other respiratory illnesses, cancer, dementia, premature morbidity, adverse pregnancy outcomes and mental health, particularly in communities close to emission sources such as wood heaters and power stations.
Air quality standards	There should be a stricter ambient PM _{2.5} standard (5.0 ug/m ³) which should never be exceeded, and standards for ultrafine particles.
Air quality monitoring	Improve local monitoring of domestic and industry emissions to better identify emission sources, for example, with the use of mobile air quality monitors by councils and the community.
Guidance for local councils	Increase local council officers' knowledge and capacity to manage air quality issues, such as wood smoke and application of vapour recovery requirements at petrol service stations.
Wood heaters	EPA/councils provide financial support for residents to switch to newer wood heater models or less polluting forms of heating. Implement a comprehensive community education campaign about the health impacts of wood heaters on the scale of quitting cigarette smoking. Some views that wood is a renewable and affordable energy source for many people while others consider wood is not a sustainable or climate friendly fuel.
Industry emissions	Strengthen regulation of emission sources not specifically addressed in the Clean Air Regulation, such as coal ash dams, coal dust and energy from waste facilities.
Load-based licensing (LBL)	The scheme does not provide a further means to reduce air pollution as LBL charges (including draft proposed changes) are an insufficient incentive and the scheme does not apply to all premises.
Motor vehicle emissions	There should be greater recognition of and action on motor vehicle emissions, including tighter vehicle emission standards and road tunnel emission controls.
Cost-benefit analysis methodology	The methodology doesn't allow a robust assessment of the potential cost impacts to industry and health benefits of the proposed changes to the regulation.
Consultation on the proposed changes	Consultation with industry and the community on the proposed changes to the Regulation was inadequate and the consultation period was too short.
Regulation reviews generally	Time frames between Regulation reviews should be shorter to maximise opportunities to modernise and improve the regulatory framework and to continuously improve environmental performance.