

VICTORIA

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EREP program comes into force

The Environment Protection (Environment and Resource Efficiency Plans) Regulations 2007 (EREP Regulations) were officially made on 11 December 2007.

The EREP Regulations prescribe the detailed requirements of the Environment and Resource Efficiency Plans program (**EREP program**) which was introduced in Victoria through an amendment to the *Environment Protection Act 1970* in August 2006, and which commenced on 1 January 2008.

The EREP program is a mandatory scheme requiring certain businesses to identify and pursue the efficient use of environmental resources in a way that is also financially beneficial. Under this program, businesses will be required to assess their environmental resource use and waste generation, develop an action plan and report on implementation of the plan.

As specified in the EREP Regulations, all businesses that are significant industrial or commercial users of energy and water (except those using premises primarily for primary production or residential housing), are required to undertake a self-assessment process to determine whether they trigger the usage thresholds. If so, the business must register with EPA in the EREP program by **31 March 2008**.

Businesses will trigger the usage thresholds if they occupy a premises that uses, in any financial year from 2006—07 onwards:

- (1) more than 100 terajoules (TJ) of energy; and/or
- (2) more than 120 megalitres (ML) of water.

The Guidelines released by the EPA describe how businesses are to undertake this self assessment and calculate their resource consumption, as well as how to register with EPA if the thresholds are triggered. EPA also has an online EREP self-assessment and registration system available at www.epa.vic.gov.au/erep.

Once a business has registered to participate in the EREP program, the business must implement integrated efficiency actions for water, energy and waste in accordance with the following steps:

- (1) Establish a resource use profile, which involves collecting, analysing and establishing baseline data for current resource use and waste generation;
- (2) Gain an understanding of the major trends in energy and water use and waste generation on the premises;
- (3) Identify, assess and prioritise all potential actions that would improve resource-use efficiency and reduce waste generation at the premises. Actions with a payback period of three years or less must be implemented under the EREP program, unless the exceptions specified in the Regulations apply;
- (4) Prepare an EREP using the list of the relevant information specified in Schedule 2 of the Regulations;
- (5) Submit the EREP within 12 months of the commencement of the program (by **31 December 2008**), or within 12 months of the end of the financial year in which the business triggers a resource use threshold. Extensions of up to 12 months may be granted in certain circumstances specified in the Regulations;
- (6) Implement and monitor the EREP program within the time frames and procedures specified in the Regulations, and as approved by the EPA; and
- (7) Submit annual and final performance reports within the timeframes specified in the Regulations.

The EREP Regulations and further information on the EREP program and requirements are available via the EPA website at www.epa.vic.gov.au/erep.

Carbon Capture and Storage Discussion Paper released

The Minister for Energy and Resources, Peter Batchelor, has released a discussion paper outlining the potential legal framework and regulations for operating Carbon Capture and Storage (CCS) processes in Victoria. The discussion paper, *A Regulatory Framework for the Long-Term Underground Geological Storage of Carbon Dioxide in Victoria*, describes the arrangements for the regulation of CCS that are currently in place, or are proposed by, the Commonwealth and other Australian jurisdictions, and presents options for a Victorian regulatory framework. The discussion paper defines CCS as the process of capturing carbon dioxide and injecting it into permanent storage in underground geological structures, such as depleted oil and gas reservoirs or deep saline aquifers, for the purpose of reducing atmospheric carbon dioxide emissions.

It is proposed in the discussion paper that Victoria develop legislation regulating the injection and storage of carbon dioxide in Victorian waters, and that this legislation should, to the extent practicable, mirror the legislation currently being developed by the Commonwealth. In 2007, the Commonwealth Government commenced the development of amendments to the *Offshore Petroleum Act 2006* to establish an access and property rights regime to enable the injection and geological storage of carbon dioxide in offshore Commonwealth waters. While the content of the proposed Commonwealth CCS legislation is uncertain given the change of Federal Government, it was originally proposed that the amendments to the *Offshore Petroleum Act 2006* would incorporate a licensing framework broadly similar to the existing regime for petroleum activities, including CCS-specific assessment permits, holding leases and injection licences.

It was also intended that the amendments would enable the establishment of a regulatory framework that would ensure CCS projects meet health, safety and environmental requirements. While the Commonwealth, Queensland and South Australia are currently developing regulatory frameworks for CCS through the amendment of existing petroleum legislation, the Discussion Paper states that it may be more appropriate for Victoria to develop standalone legislation, given the fundamental differences between petroleum legislation and CCS processes. It is noted, however, that irrespective of the legislative vehicle chosen, Victoria's framework will need to be consistent with CCS injection and storage legislation in other jurisdictions. In proposing a Victorian regulatory framework for the onshore underground geological storage of carbon dioxide, the Discussion Paper addresses the following key issues:

- Assessments and approvals for CCS injection and storage activities, including selection criteria;
 - Access arrangements, including pipeline transportation;
 - Surface and subsurface rights for CCS operators conducting injection and storage activities;
 - Injection of carbon dioxide as part of CCS operations;
 - Storage of carbon dioxide as part of CCS operations;
 - Monitoring of injection sites and storage formations, including post-injection phase;
 - Environmental and safety impacts; and
 - Liability, including post-closure.
- Further details are available on DPI's website: www.dpi.vic.gov.au

Launch of the Carbon Offset Guide

Carbon Offset Guide

In December 2007, EPA Victoria (EPA) and Global Sustainability at RMIT (GS) launched the Carbon Offset Guide as a resource for businesses, government agencies, NGO organisations and individuals seeking information about carbon offsets. EPA and GS formed a partnership in mid-2007 to produce the Carbon Offset Guide website. The website was developed with the aim of providing an independent directory of Australian carbon offset providers; the intention being that the website will improve Australian business' understanding of the offset market and will facilitate better environmental and economic outcomes.

The partnership identified the need for a web-based Carbon Offset Guide when the carbon offset market began expanding so rapidly. At the launch, it was noted that, while prices per tonne of carbon offsets have remained relatively stable, there is great variety in the type of offset projects available and their accreditation status. Therefore, to assist businesses and individuals in navigating the offsets market, the Carbon Offset Guide provides a list of carbon offset providers, prices, project locations, descriptions and accreditation standards. The Carbon Offsets Guide website will be reviewed and updated every three months to add new offsets providers and to expand the information of existing providers.

What is a carbon offset?

A carbon offset is generated by a project or activity that reduces greenhouse gas emissions or sequesters carbon from the atmosphere. Carbon offsets are used to compensate for greenhouse gas emissions from another project, activity, or business. According to the Carbon Offsets Guide website, both EPA and GS regard carbon offsets as only one aspect of an organisation's or individual's broader carbon management strategy. The partnership encourages organisations and individuals to develop an effective carbon management strategy that looks beyond offsets, and that optimises financial and environmental outcomes. EPA's Carbon Management Principles, which were developed to guide EPA's own decision making process in becoming carbon neutral, can serve as a useful framework for businesses seeking to develop a carbon management strategy. The Principles encourage businesses to first calculate direct and indirect greenhouse gas emissions, to then avoid and reduce these emissions where possible, and to offset only those emissions that cannot be reduced further.

Further details about the Carbon Offset Guide are available at the Guide's website:

www.carbonoffsetguide.com.au

Further details about EPA Victoria's Carbon Management Principles are available at:

www.epa.vic.gov.au

New Protocol for Environmental Management on Mining and Extractive Industries

EPA Victoria has released a Protocol for Environmental Management (PEM) on mining and extractive industries. The PEM is an incorporated document of the *State Environment Protection Policy (Air Quality Management) 2001 (SEPP AQM)*, which sets out the framework for managing emissions into the air environment. The PEM supports the interpretation of SEPP (AQM) by setting out the requirements for assessment and management of emissions to the air environment from the mining and extractive industries. While all mining and extractive industries are required to comply with SEPP (AQM), it is intended that the PEM will apply to new developments and existing developments, where significant modification or expansion occurs. Under the PEM, certain mining and extractive industry proposals will be required to conduct air quality assessments, including those proposals that require an Environment Effects Statement or an EPA Works Approval or Licence. Applicants for an Extractive Industry Work Authority or a Mining Licence from DPI may also be required to conduct an air quality assessment depending on the size and location of the proposed operation and the type of activity proposed.

Proponents of new or expanded facilities for the activities listed in the PEM that require assessment are advised to contact EPA Victoria for guidance prior to the design phase of their proposals to ensure that the design and specifications meet the requirements of the PEM. The new PEM can be viewed as Publication 1191 on EPA Victoria's website: www.epa.vic.gov.au

New Residential Zones for Victoria

The Minister for Planning has initiated a review of the residential zones in Victoria. The aim of the review is to make the residential zones more certain, more locally responsive and more user friendly. The development of new residential zones is a key action in the Victorian Government's five point priority action plan to implement the working group report, *Making local policy stronger*. This report recommended to the Minister for Planning that many local planning provisions would be more effective if implemented through more locally responsive zones and overlays. The working group noted in particular that the current residential zones do not effectively reflect the strategic objectives of most local housing strategies.

In February 2008, the Minister for Planning released a discussion paper entitled *New Residential Zones for Victoria*, which outlines a broad structure for the three proposed new residential zones: the Substantial Change Zone, the Incremental Change Zone and the Limited Change Zone. According to the Discussion Paper, these new zones are intended to more directly reflect the objectives of State and local planning policies for housing and to provide better tools for councils to manage the diverse and changing housing needs of their communities. It is intended that the new residential zones will serve as a primary mechanism in meeting the challenges raised by population growth and the trend towards fewer people living in each household. The zones will be particularly important in dealing with the challenges faced by the need to manage growth and service new populations in coastal settlements and regional centres. The Department of Planning and Community Development is seeking comments on the discussion paper and on the concepts for the proposed new zones. The responses to the discussion paper will inform the preparation of final detailed draft zones which are expected to be made available for further comment in mid 2008.

Strict Environmental Controls For Channel Deepening

On 14 December 2007 Minister for the Environment and Climate Change, Gavin Jennings, imposed three conditions on his approval of the Port of Melbourne Corporation's application to deepen the main shipping channels in Port Phillip Bay. Mr Jennings gave his approval under the *Coastal Management Act 1995* subject to the Port of Melbourne Corporation adhering to a comprehensive Environmental Management Plan (EMP), backed up by a \$100 million environmental bond and overseen by an Independent Environmental Monitor. The Port of Melbourne Corporation will also invest \$6.65 million in the environmental initiatives recommended by the Minister for Planning in his assessment. Mr Jennings stated.

"I am satisfied that concerns about any effects of deepening the main shipping channels in Port Phillip Bay can be addressed through the environmental strategies and plans attached to the project,"

(Minister's Press Release Friday, December 14, 2007)

QUEENSLAND

Larissa Waters

Caselaw update: First Third Party nature conservation case finally won after appeal and re-hearing

Readers may recall from the Spring 2005 Qld NELR Update the case of *Booth v Frippery Pty Ltd and Ors*, the first public enforcement action under state wildlife protection laws, to stop the electrocution of protected black flying-foxes by a lychee farmer in northern Queensland using electrified grids. Despite the farmer's admissions of thousands of illegal bat killings, at first instance in the Planning and Environment Court Judge Pack DCJ found that the defence in section 88(3) of the *Nature Conservation Act 1992* had been made out.