# recent developments

## VICTORIA

*Elisa De Wit*

### *Victorian Energy Efficiency Target Scheme*

The Victorian Government has committed to implementing the Victorian Energy Efficiency Target Scheme (VEET Scheme) by 1 January 2009. The *Victorian Energy Efficiency Target Act 2007* (Act) was passed in December 2007 and in preparation for the imminent start date, draft Victorian Energy Efficiency Target Regulations (Regulations) were released on 11 August 2008 (consultation closed 3 October). A Regulatory Impact Statement which provides the rationale for, and analysis of, the proposed Regulations has also been prepared and the Essential Services Commission, which will administer the VEET Scheme, has issued draft Scheme Guidelines to support the implementation of the Act (consultation closed 19 September).

#### The VEET Scheme Objectives

While the Australian Government's chief response to greenhouse gas emissions mitigation will be the Carbon Pollution Reduction Scheme, there is international consensus that many cost-effective improvements in energy efficiency may not be delivered by emissions trading schemes alone, because of market failures and barriers which prevent the full uptake of the commercial energy efficiency opportunities created by the price on emissions. The VEET Scheme seeks to address these market failures and is designed to help achieve the Victorian Government's commitment of reducing GHG emissions from households by 10% by 2020 and Victoria's overall emissions to 60% below its 2000 level by 2050. The VEET Scheme's objectives are to:

- reduce greenhouse gas emissions,
- encourage the efficient use of electricity and gas, and
- encourage investment, employment and technology development in industries that supply goods and services which reduce the use of electricity and gas by consumers.

#### Operation of the VEET Scheme

The VEET Scheme will require all electricity and gas retailers (with more than 5,000 Victorian customers) to surrender Victorian Energy Efficiency Certificates (VEECs). One VEEC will equal 1t of $CO_2$-e avoided. The liability of retailers (i.e. how many VEECs they will be required to surrender) will be based on the market share of that retailer and the target attributed to that fuel. The overall emissions reduction target set for the first three years is 2.7 million tonnes per annum.

VEECs can be traded and must be registered on the scheme registry. VEECs can be banked for use in future years for up to 6 years though borrowing from future years is not permitted. VEECs can be created by anyone who has been accredited under the Scheme for activities that are prescribed in the Regulations.

#### The VEET Regulations

The draft Regulations prescribe a list of energy efficiency activities undertaken in residential premises that may serve as the basis for creating VEECs, for example:

- installing efficient lighting;
- decommissioning inefficient water and space heaters and switching to more efficient appliances (e.g. 5-star appliance v market average) including switching to solar hot water;
- building shell improvements (insulation, window treatments).

Specific detailed criteria in relation to each of the activities and the specifications which products must meet are specified in schedules. The draft Regulations also prescribe a penalty rate of $40 for 2009 (indexed) for each VEEC required to be, but not, surrendered.

## *EPA Discussion paper - The Future of Hazardous Waste Management in Victoria*

An EPA discussion paper on The Future of Hazardous Waste Management in Victoria was published in July to generate ideas for the development of a new regulatory framework for the management of hazardous waste through to 2020. The discussion paper outlined background information on the current regulatory framework and put forward questions to stimulate feedback. Written submissions closed at the end of August.

In light of the imminent expiration of the current regulatory tools, EPA aimed to explore what new regulatory and non-regulatory approaches could help to meet the State Government's objective to end the landfill disposal of higher hazard waste by 2020. EPA recognised that the interests of the community, the economy and the environment must also be taken into account.

EPA sought ideas on how to create a less complicated, more effective and innovative framework, particularly in light of the fact that the establishment of a long-term containment facility is no longer an objective. Instead, EPA sought ideas on how Victoria can accelerate the avoidance, reuse and recycling of hazardous waste.

EPA will review all feedback and prepare a draft regulatory framework for hazardous waste for release and public comment in November 2008.

## *Enforceable Undertakings*

The EPA has recently published draft guidelines for enforceable undertakings and is now seeking public consultation. Enforceable undertakings are a new enforcement tool under the *Environment Protection Act 1970* which can be used as an alternative to prosecution. An enforceable undertaking is a binding agreement between a person and the Authority where the person makes undertakings in relation to a breach or alleged breach of the Act or regulations. Their aim is to protect the environment while delivering efficient and cost effective responses to environmental breaches.

The advantage of this enforcement option is that as the agreement can be adapted to specific circumstances, it has the potential to achieve its primary objective of implementing systemic change in an organisation to ensure compliance with the Act and regulations.

### When an enforceable undertaking will be entered into

The Authority may enter into an enforceable undertaking where it is likely to result in a more effective outcome than prosecution and is an appropriate course of action in the circumstances.

Neither the Authority nor the person can compel the other party to enter into an enforceable undertaking. A person, however, can offer to enter into an enforceable undertaking or the Authority can suggest that an enforceable undertaking is appropriate.

Officers independent of the investigation will be responsible for the development of the enforceable undertaking. The Authority's internal Enforcement Review Panel as well as an independent advisory panel must consider the offer and advise the Authority as to whether it should be accepted. The Authority has the ultimate responsibility for accepting or rejecting the offer and should make decisions in a timely manner.

### Content

The obligations expressed in the enforceable undertaking are negotiated between the Authority and the particular party. While each enforceable undertaking

will be tailored for the circumstances, it will include certain information such as the details of the relevant conduct, a commitment to stop the conduct, timelines for action, monitoring and reporting requirements, failure and termination provisions as well as an acknowledgement that the undertaking will appear on a public register maintained by the Authority.

The guidelines outline suggested commitments but reiterate that the success of this enforcement option relies on the flexible nature of enforceable undertakings. An enforceable undertaking will not be accepted if it denies responsibility for the breach or alleged breach, omits details of the relevant conduct or contemplates non-compliance.

### Non-compliance

Legal action may be taken in the Magistrate's Court to enforce enforceable undertaking where there has been failure to comply. Where there is non-compliance with a court order, the Authority can pursue other options such as carrying out actions outstanding under the order or initiating contempt of court proceedings. The Authority will publicise the failure to comply with the undertaking and the order.

### Variations and withdrawals

The Authority must consent to a variation or withdrawal of an enforceable undertaking. For the Authority to consent, the spirit of the original undertaking must not be altered or the circumstances must have changed in a way that makes compliance impractical. An enforceable undertaking will only be withdrawn in exceptional circumstances.

## NEW SOUTH WALES

*Nicholas Brunton*

### *Contaminated Land Management Amendment Bill 2007*

### Background

The *Contaminated Land Management Act* 1997 (CLMA) was introduced in 1997 to regulate sites in NSW impacted by historical contamination.

The CLMA established a regime for determining responsibility for remediating contaminated sites, and a process for cleaning up those sites under the supervision of the EPA.

The EPA commenced a review of the CLMA in October 2003. This culminated in the drafting of the *Contaminated Land Management Amendment Bill* 2007 (the Bill) which was tabled in the NSW Parliament on 26 June 2008. It is not expected to be passed and enacted until the September 2008 sitting of Parliament.

### Major Changes

The most significant differences between the CLMA and the Bill are summarised below:

*Removal of Significant Risk of Harm Test*

Many of the public submissions received by the EPA following the release of a discussion paper on the CLMA noted that the term "significant risk of harm" was overly emotive and created unnecessarily adverse public perceptions. Once the Bill is passed, sites will be referred to as "significantly contaminated land" instead of a "significant risk of harm site". However, the test for determining whether a site warrants regulation under the Bill is almost identical to the test under the CLMA.

*Stages of Regulation*

Under the CLMA, land is first declared to be an "investigation area", and then an investigation order is issued or a voluntary