

*Environmental Management and Pollution Control
(Distributed Atmospheric Emissions) Regulations 2007*

Implementation Evaluation Report

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EPA Division

Department of Primary Industries, Parks, Water and
Environment



This report was prepared by the EPA Division of the Department of Primary Industries, Parks, Water and Environment.

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Introduction

Tasmania's *Environmental Management and Pollution Control (Distributed Atmospheric Emissions) Regulations 2007* (the regulations) specify environmental regulatory requirements in relation to solid fuel heaters¹ and backyard burning. The regulations were made under section 102 of the *Environmental Management and Pollution Control Act 1994* (EMPCA) and were developed in accordance with the *Tasmanian Air Quality Strategy* that was published in 2006, although similar regulatory provisions were proposed several years earlier. The main provisions of the regulations are as follows.

Solid fuel heaters:

- manufacture and importation of heaters – heaters must comply with the current Australian Standard;
- sale of heaters – heaters sold (both new and second-hand) must comply with the current Australian Standard;
- modification of heaters – prohibition on any modification of heaters that may increase emissions;
- permitted fuels that may be burnt in heaters – effectively a prohibition on unacceptable fuels such as plastics and treated timber; and
- visible smoke emissions from heaters, fireplaces, barbecues and other devices – prohibition on smoke plumes of excessive duration or extent.

Backyard burning:

- prohibition of burning on allotments of less than 2,000 square metres;
- opt-out provision for councils on the above prohibition; and
- permitted fuels for backyard burning.

Public consultation on the draft regulations was undertaken in mid 2007. The Local Government Association of Tasmania (LGAT), in its consultation submission, requested that the then Environment Division² conduct a formal evaluation of the impact of the regulations on councils (in terms of workload and resources) 12 months after their commencement. The regulations commenced on 15 August 2007.

The Division commenced an evaluation in August 2008 with a survey of councils. The evaluation has now progressed further and is discussed in this report. The main purpose of the evaluation was to determine the impact of the regulations on councils, as requested by LGAT. The Division considered that it would also be useful to assess the extent to which councils actually use the regulations, and how they view the regulations. Ideally the impact of the regulations on air quality would also be evaluated, but this is outside the scope of the current evaluation.

¹ Most solid fuel heaters use wood as fuel, but the regulations (in common with similar legislation in other jurisdictions) apply to heaters burning all types of solid fuel. Other fuels include coal, briquettes and fuel pellets.

² The name of the Environment Division changed to the EPA Division on 1 January 2010.

Responsibilities

Local government is currently responsible for implementing the following aspects of the regulations (the 2008 survey of councils dealt only with these aspects):

- sale of second-hand heaters;
- modification of heaters in service;
- visible smoke emissions from heaters, fireplaces, etc;
- backyard burning; and
- permitted fuels for heaters and backyard burning.

The Environment Protection Authority (EPA), supported by the EPA Division, is currently responsible for implementing the remaining aspects of the regulations, i.e. the manufacture and importation of heaters and sale of new heaters.

This is a customary division of responsibilities and no formal agreement or memorandum of understanding exists, although section 20A of EMPCA places a responsibility on local government to regulate matters of this kind.

Survey

The results of the August 2008 survey of Tasmanian councils were presented in a report in October 2008³. The results were summarised as follows.

- Between the two reporting years, complaints about smoke from heaters and the like decreased, but the number of complaints about backyard burning and prohibited fuel increased. Overall, the total number of complaints remained relatively constant.
- Total cost to councils [of complaint investigation] did not change significantly with the introduction of the regulations.
- Written warnings are issued reasonably frequently in relation to smoke from wood heater and backyard burning respectively, but the rate changed little with the introduction of the regulations.
- Councils rarely undertake enforcement action in terms of issuing infringement notices and the like, and the regulations appear to have had little or no impact in this regard.
- Enquiries to councils increased in relation to all matters covered by the regulations, though the absolute enquiry level remains quite low.
- Councils' record-keeping in relation to complaints is variable and may require improvement.
- It appears that councils did not use the regulations to any great extent, and that they may have had little impact on total complaint numbers.

All councils (including those that did not respond to the survey) and the LGAT were provided with a copy of the report and the LGAT was asked to provide a combined response. A response was received in August 2009, in which the LGAT advised as follows.

³ *Environmental Management and Pollution Control (Distributed Atmospheric Emissions) Regulations 2007. Implementation Evaluation Survey – August 2008. Summary Report*; Department of Environment, Parks, Heritage and the Arts, Hobart, 2008.

- Councils generally do not have the resources to be proactive in this area. While they will respond to complaints, proactive implementation is a low priority.
- Councils do not see it as their role to educate the public about the regulations.
- Council officers are likely to continue to use existing enforcement regimes under the EMPCA (in addition to, or instead of, the regulations).
- In relation to community public relations, councils are in an invidious situation while large scale burn-offs continue.

Discussion and Options

The apparently limited use of the regulations may have adverse implications for achievement of the objectives of the *Tasmanian Air Quality Strategy*. The use of solid fuel heaters is still widespread in Tasmania and their emissions contribute significantly to poor air quality in some urban areas. It is therefore important to ensure that new and resold heaters comply with the current Australian Standard, that older heaters are removed from circulation when surplus, and that heaters and other devices do not produce excessive visible smoke when operated. Backyard burning also remains a significant issue for air quality and environmental amenity.

While it is possible that other legislative mechanisms, including Council by-laws, are being used to improve or moderate impacts to air quality, the survey results and LGAT's comments indicate that local government does not generally consider heater emissions and backyard burning to be a high priority at present. This has implications for achieving the wider objectives of the Air Quality Strategy.

The survey results and LGAT's comments also indicate that there has been no significant promotion or publicising of the regulations. The commencement of the regulations was announced by the Minister, which generated some media coverage. The Division also produced and distributed explanatory leaflets to councils and some information has been provided on the Division's website.

Resourcing has been cited as a critical issue for local government since regulatory provisions about solid fuel heaters and backyard burning were first proposed. The EPA Division currently provides technical advice to councils on request and has issued guidelines to assist with implementation of the regulations, but this has apparently been of little benefit in encouraging councils to apply the regulations.

Options likely to improve environmental outcomes by more active application of the regulations include:

- Education and awareness – Increase public awareness through development and dissemination of further educational material to help improve compliance, and reporting of non-compliance.
- Enforcement – Implement active enforcement programs to detect and respond to non-compliances.
- Consolidation of responsibility – Through economies of scale, achieve greater efficiency and effectiveness by concentrating responsibility for education, awareness and enforcement into fewer responsible bodies or one responsible body.

However, each of these options is likely to be at considerable cost to local and/or State government, which serves to highlight the key question; how useful are these regulatory provisions in the absence of significant commitment to actively apply them?

Nevertheless, given the effort already invested it seems premature to consider moves to rescind the regulations just yet, as the provisions [in theory] are rather useful. In particular, the heater manufacture, importation and sale provisions should be retained. These provisions are included to ensure compliance with heater emission standards at the points of manufacture, import and sale. The continued prohibition on the sale of second-hand heaters that do not comply with current emission standards will ensure the progressive retirement of older heaters, which tend to be associated with higher pollutant emission levels.

There has also been some recent press coverage of the heater smoke issue and the regulations. If media coverage continues this may help improve public awareness of the regulations and provoke greater council action concerning their implementation.

In addition, action has recently been taken by the EPA Division to form an 'Implementation Steering Committee'⁴ (ISC) whose role it is to better coordinate implementation of the Tasmanian Air Quality Strategy. Implementation of the regulations are among the matters being considered by this Committee.

Conclusion

The survey results and subsequent analysis suggest that more time should be taken to assess how the regulations are being used and whether they are an effective tool to help manage smoke pollution from wood heaters and backyard burning.

In particular, as the Air Quality Strategy ISC has only recently been formed, more time is required to allow for their consideration of issues such as the three options outline above, and for actions arising to have a measurable effect. The Committee's strong local and state government representation provides a valuable forum to identify ways to leverage more value from the regulations, in the broader context of achieving the objectives of the Air Quality Strategy. This is also timely, as the Strategy itself is due for its five year review in 2011. Matters such as the objectives, implementation and effectiveness of actions, can then be considered holistically.

Subject to the findings of the review of the Strategy, it is appropriate to consider another review of the regulation's value and effectiveness, and that this be conducted prior to their automatic repeal in 2017⁵. The most appropriate timing for a review is 2013-14, which will allow time for actions currently underway or planned to have measurable effects, and to give time for appropriate consultation and full consideration to any major changes if they are proposed.

⁴ The Committee consists of representatives of the EPA Division, the Department of Health and Human Services, the Department of Infrastructure, Energy and Resources, LGAT and the Launceston City Council.

⁵ The regulations are due to sunset in August 2017 in accordance with section 11 of the *Subordinate Legislation Act 1992*.