Product Stewardship (Oil) Amendment Regulations 2003 (No. 1) 2003 No. 47

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 47

Subject: *Product Stewardship (Oil) Act 2000*

Product Stewardship (Oil) Amendment Regulations 2003 (No. 1)

Section 37 of the *Product Stewardship (Oil) Act 2000* (the Act) provides for the Governor-General to make Regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for the payment of product stewardship benefits to eligible recyclers of waste oil for appropriate waste oil products recycled and sold in Australia [Section 9]. The Sections of the Act pertaining to the payment of benefits came into effect on 1 January 2001. The benefit takes the form of a payment made to an oil recycler for the sale or consumption of oil that has been recycled in Australia.

The purpose of the Regulations is to specify revised requirements for the quality of any re-refined oil product before it may be considered eligible to receive a product stewardship (oil) benefit.

The *Product Stewardship (Oil) Regulations 2000* impose standards for carcinogenic compounds in re-refined oils that are much tighter than levels normally present in virgin oils. There are no existing international (or Australian) standards for carcinogenic compounds in virgin oils. The *Product Stewardship (Oil) Amendment Regulations 2003* (the Regulations) ensure that re-refined oils are not disadvantaged in the market place by requiring lower levels of dioxins and furans than virgin oils. The Regulations also bring the Polychlorinated Biphenyls (PCB) standard in line with the Australian and New Zealand Environment and Conservation Council (ANZECC) definition for 'PCB free', place further restrictions on PAHs, and introduce new standards for select heavy metals. Changes to specified tests and standards ensure that the most recent and relevant standards and test methodologies are applied to the criteria.

Schedule 1 of the Regulations specifies criteria for a range of toxic substances, or measures of toxicity, such as mutagenicity, poly-aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), dioxins and total acid number (TAN), in order to protect users and workers from toxic and carcinogenic substances. The Regulations also specify compliance with current national or international standards in relation to the presence of these chemical compounds or heavy metals in re-refined oil.

Details of the Regulations are set out in the Attachment.

The Regulations commence from 1 July 2002. The retrospectivity of the Regulations provides an opportunity for eligible claimants to receive a category 1 product stewardship (oil) benefit from this date. This provides a benefit to industry and a further incentive to the production of re-refined oil. The Commonwealth will be the only party to bear a cost in relation to the retrospective commencement date of the Regulations. Therefore, the Regulations satisfy subsection 48(2) of the *Acts Interpretation Act 1901*, and are validly made retrospectively.

Authority: Section 37 of the *Product Stewardship (Oil) Act 2000*

Attachment

Details of the Product Stewardship (Oil) Amendment Regulations 2003 (No. 1)

Regulation 1 provides that the name of the Regulations is the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 1)*.

Regulation 2 provides for the Regulations to commence from 1 July 2002.

Regulation 3 provides that Schedule 1 of the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 1)* amends the *Product Stewardship (Oil) Regulations 2000.*

Schedule 1 is substituted in its entirety:

Note - this note will replace the individual notes on each criterion, and will apply to all of the Schedule 1 criteria.

1 Mutagenicity - removes the reference to an x-fold increase of less than 2. The x-fold increase is not reported by the modified Ames Test and is not required as a measure of mutagenicity.

2 Poly-aromatic hydrocarbons (PAHs) - PAHs comprise a group of chemicals with varying levels of toxicity and carcinogenicity. In addition to the original criterion for all PAHs the Regulations will add specific limits to regulate the seven most toxic and bio-accumulating PAH compounds. The proposed criterion provides that, while the overall level of PAHs remains at less than 1000mg PAHs per kilogram of oil, limits for specific PAHs are introduced and the total limit for these individually specified PAHs is capped at 400mg per kilogram of oil.

The original test method was designed for testing soil, sediment and sludge samples, and did not yield reliable or accurate results in oil. The test method specified (US EPA test SWA-846 Method 8270C) is more appropriate for oil testing.

3 Polychlorinated biphenyls (PCBs) - the original specified test cannot reliably measure to a limit of 0.1mg of PCBs per kilogram of oil. Guidance included in the ANZECC PCB Management Plan allows any material with a PCB level of less than 2.0mg of PCBs per kilogram of oil to be classified as 'PCB free'. Originally set in 1996 the ANZECC PCB Management Plan was developed and supported by ACF and Greenpeace and other environmental NGOs. A five year review in 2001 reaffirmed the 2mg/kg 'PCB free' description, and in September 2002 the Environment Protection and Heritage Council (EPHC) Standing Committee recommended that the PCB Management Plan and its current threshold values be retained. The majority of Australian States and Territories have adopted the recommendations of the PCB Management Plan through legislative measures.

The specified test (EPA test SWA-846 Method 8082) is able to detect PCBs at a level consistent with the PCB Management Plan. This criterion will provide that the required level of PCBs in re-refined oils is consistent with the ANZECC PCB Management Plan.

4 Polychlorinated dibenzodioxins (PCDDs) and polychlorinated furans (PCDFs)- a level of 10 picograms Toxic Equivalent (TEQ) for each gram of oil will require oil recyclers to match the levels of dioxins and furans currently found in virgin product. The specified test (EPA Method 1613A) is a newer, more sensitive test, which will allow more accurate detection of dioxins in re-refined oils.

5 Total acid number (TAN) - the current level of 0.03mg of potassium hydroxide for each gram of oil is close to the limit of detection of the specified test (ASTM D974-97). Samples will sometimes pass an initial test at this level and then fail upon re-testing. A TAN limit of 0.07mg of potassium hydroxide for each gram of oil will provide for a result that is more consistent during testing.

6 Heavy metals- this new criterion will provide a limit for the presence of specified heavy metals within re-refined oils. The levels specified will ensure heavy metals in re-refined oils remain at safe levels.

7 Appearance - this criterion is unchanged but is renumbered from 6 to 7.

8 References to tests or methods - this new criterion provides that all of the tests and methods as defined by the Schedule 1 criteria refer to those as in force at 1 July 2002.