



DOC18/917875-5
SSD 9741

Ms Joanna Bakopanos
Team Leader
Industry Assessments
NSW Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

-via email-

Dear Ms Bakopanos

14 October 2019

**Licencing Requirements for Lane Cove West Data Centre (SSD 9741)
– 1 Sirius Road, Lane Cove West**

I refer to Industry Assessment's request for advice as to whether an Environment Protection Licence (EPL) would be required for the proposed Lane Cove West Data Centre (SSD 9741) and if the EPA would therefore like to provide comments and recommended conditions of consent. In particular:

- The email from Industry Assessment on 25 September 2019 noting that Appendix 39 of the amended Environmental Impact Statement – Proposed Data Centre, Prepared by Willowtree Planning Pty Ltd on behalf of Greenbox Architecture, dated September 2019 (EIS) proposed that up to 3,336,000 million litres of fuel would be stored at the Premises; and
- The email from Industry Assessment on 3 October 2019 clarifying the size of the associated generators.

Licensing Requirements

As discussed with Industry Assessment it is unclear whether an EPL would be required for the proposed activity as outlined in the amended EIS due to inconsistencies in the amended EIS. In particular, whether an EPL would be required under:

- i) Clause 9 of Schedule 1 of the POEO Act for chemical storage, petroleum products storage. If more than 2000 tonnes of diesel (~2.26M litres) an EPL would be required.
- ii) Clause 17 of Schedule 1 of the POEO Act for electricity generation for metropolitan electricity works (internal combustion engines). This does not apply for stand-by plant that is operated for less than 200 hours per year.

The EPA understands that Industry Assessments have been seeking to clarify the scale of these activities as outlined in the amended EIS through discussions with the applicant. If Industry Assessments

determines that the proposal will not reach the threshold required for each of the above scheduled activities, then EPA will not need to have further input into the matter. However, EPA recommends that relevant conditions and constraints be included for proposed development to:

- I. ensure the capacity for diesel storage at the Premises does not exceed the amount of diesel required to run the proposed generators for a maximum of 200 hours in one year; and
- II. ensure the consent includes a condition stating that the proposed generators not be permitted to operate for more than 200 hours in one year.

Additionally, it is not clear whether sufficient information has been provided to inform the noise and air assessments in relation to the proposed specific generator, fuel storage facilities and any other activities. It is therefore recommended that Industry Assessments review the relevant assessments to ensure:

- i) the noise assessment has adequately identified and assessed the impacts from the proposed collective activities in accordance with their design specifications and the *Noise Policy for Industry (2017)*;
- ii) that appropriate noise limits are included in the consent (for daytime, evening and night, if so proposed);
- iii) That the air quality assessment has adequately assessed the impacts from the proposed collective activities, in accordance with the *Approved methods for modelling and assessment of air pollutants in NSW*;
- iv) That air concentration limits and monitoring points are included in the consent, if deemed necessary; and
- v) That conditions are included in the consent to ensure the appropriate storage of fuels and oils to ensure containment.

The EPA takes this opportunity to remind Industry Assessment that pollution of waters is prohibited under s.120 of the *Protection of the Environment Operations Act 1997*. This should be considered if any discharges to water are proposed.

Underground Petroleum Storage Systems

It is also unclear from the EIS whether the diesel is proposed to be stored in underground or above ground tanks as the EIS contains conflicting statements and drawings. If diesel is to be stored in underground tanks, the requirements of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* ('the UPSS Regulation') would apply. If the diesel storage tanks are above ground, the UPSS Regulation will not apply and bunding requirements are set out in *AS 1940:2017 The storage and handling of flammable and combustible liquids*.

There are some exemptions that apply for diesel storage tanks that are located (partially or fully) underground, if used to fuel back-up generators at commercial premises. Please see Attachment 1 for details of this exemption.

Contaminated Land Management Act 1997

The EPA also takes this opportunity to remind Industry Assessment that the site has a current 'Maintenance of Remediation Order (Notice No. 28027, dated 27/09/2005), issued to Demian Developments Pty Ltd. The notice was issued under Section 28 of the *Contaminated Land Management Act 1997* (CLM Act) to maintain the capping layer at the site to prevent exposure risks to impacted soil and to reduce infiltration of surface water. The contaminants of concern are heavy metals and hydrocarbon contamination. The notice is in force until it is otherwise varied or revoked.

Under the terms of the notice, written approval from the EPA must be obtained to undertake works at the site, including:

1. The approval to disturb the site surface is limited to the works proposed by the consultants;
2. All persons undertaking excavation works at the site must undergo a safety induction prior to commencement of works;
3. Site security must ensure all access to the site by unauthorised personnel during the investigation works is prevented;
4. All excavated material and wastewater generated during the investigation works must be classified, handled, transported and disposed of offsite at a licensed facility that is authorised to accept the material in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*;
5. A report of the works undertaken is to be provided to the EPA of the completion of the works. The report must identify any issues encountered during the works, including all waste disposal certificates for the excavated material and certificates for any material received as imported fill used in site surface reinstatement; and
6. Where conditions of approval differ from the scope of works outlined in the development proposal, then additional approval from the EPA is required.

At present the EPA is awaiting a report from recent Environmental site investigation, works which EPA gave approval for in October 2018.

If you have any questions related to matters within this letter, please do not hesitate to contact Jarrod Grimston on [REDACTED].

Your Sincerely



Christine Mitchell
A/Unit Head – Sydney Industry
Environment Protection Authority

Attachment 1. Order under Clause 28 of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014



Order under Clause 28 of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014

The exemption for a Person Responsible for Underground Petroleum Storage Systems used for back-up generators, heating oil and waste oil storage

Introduction

This order, issued by the Environment Protection Authority (EPA) under clause 28 of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* (the **Regulation**), exempts a Person Responsible for an underground petroleum storage system of a type listed in this exemption, from certain provisions of the Regulation, in respect of that storage system.

1. Revocation of the Order in effect from 9 November 2018

1.1 This Order revokes the Exemption Order for persons responsible for Underground Petroleum Storage Systems used for back-up generators, heating oil and waste oil storage, which was published in Gazette number 119 on 9 November 2018.

2. Work to which this order applies

2.1. This order applies to underground petroleum storage systems of the types listed in Table 1 below:

Table 1 – Underground petroleum storage system types.

A storage system that is used solely for a back-up generator in a commercial premises or residential premises; or
A storage system that is used solely for the storage of heating oil in a residential premises or the contents of which are used solely for the purpose of heating a residential premises; or
A storage system that is used solely for the storing of waste oil

2. Class of persons to whom this order applies

- 2.1. The requirements in this Order apply, as relevant, to a Person Responsible (as defined in cl 3 of the Regulation) for the underground petroleum storage system types listed in Table 1, above.
- 2.2 This Order does not apply to underground petroleum storage systems of types not listed in Table 1, above.

3. Duration

- 3.1. This Order commences on the day of its publication in the Gazette and remains in force until 31 August 2021.

4. Exemption

- 4.1. This Order exempts the classes of Person Responsible for an underground petroleum storage system of a type listed in Table 1 (above), from the provisions of the Regulation listed in Table 2 (below), in respect of that storage system.

Table 2 - Requirements of the Regulation

Clause 16 The requirement for a storage system to have a secondary leak detection system.
Clause 19 The requirement to prepare and implement an environment protection plan
Clause 20 The requirement to check and maintain gauges, indicators, groundwater monitoring wells and other measuring instruments in the system and recording the data produced by the measuring instruments.
Clause 21 The requirement to test the groundwater in each groundwater monitoring well, and to test any alternative secondary leak detection system on the storage site.
Clause 24 (1) and (2) The requirement to keep an incident log for a storage system.
Clause 25 (1) (b) The requirement to keep for 7 years from the date of creation, any document containing data produced by measuring instruments.
Clause 25(1) (c) The requirement to keep for 7 years from the date of creation, any document containing details of any action taken to investigate and fix any leak detected by a loss monitoring procedure.
Clause 26 (1) (c) The requirement to keep for 7 years from the date of decommissioning of any storage system, any report on a secondary leak detection system.
Clause 26 (1) (d) The requirement to keep for 7 years from the date of decommissioning of any storage system, any versions of environment protection plans.
Clause 26 (1) (f) The requirement to keep for 7 years from the date of decommissioning of any storage system, any incident log kept for the system.

5. Conditions

- 5.1 This Order is subject to the condition that the person complies with all of the provisions of the *Protection of the Environment Operations Act 1997* and the provisions of the Regulation not otherwise exempted.

6. Definitions

- 6.1 Terms used in this Order have the same meaning as in the Regulation.
- 6.2 In this Order:
- commercial premises** means premises used for a commercial purpose, but does not include premises used for an industrial purpose.
- residential premises** means premises used as a residence.
- waste oil** means oil that has been used for lubricating or other purposes and has become unsuitable for its purpose due to the presence of impurities or loss of its original properties and is not intended for combustion.

JOANNE STUART,
A/Director
Contaminated Land Management
Environment Protection Authority
by delegation
Date: 26 August 2019

Notes

The EPA may revoke this order at any time. It is the responsibility of the Person Responsible for the UPSS to ensure that they comply with all relevant requirements of the most current version of this order. The current version of an exemption order will be available on the EPA website:
www.epa.nsw.gov.au

In gazetting this order, the EPA is exempting the Person Responsible from complying with the specific requirements of the Regulation outlined in Table 2 of this order in respect of certain storage systems.

(n2019-2526)