

Attachment #1

Smoke from burning on blocks of 2000 square meters or more. 'Back yard burning'.

Draft for Meeting with Brian Wightman MP, Minister for Environment, Parks and Heritage 9.30m St John Street, Launceston, 15/6/2012.

Main applicable Acts, Regulations and Policies:

Environmental Management and Pollution Control Act. (EMPCA 1994)

- The EPA is responsible for administering EMPCA 1994
- EMPCA is the primary environmental protection and pollution control legislation in Tasmania.
- It's fundamental basis being the prevention, reduction and remediation of environmental harm.
- The clear focus of the Act is on preventing environmental harm from pollution and waste.
- A person who causes material environmental harm by polluting the environment intentionally or recklessly with the knowledge that material harm will or might result is guilty of an offence.
- A person who wilfully and unlawfully causes environmental nuisance is guilty of an offence.

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

- No outdoor burning on blocks of 2000 square meters or less.

Environment Protection Policy - Air Quality 2004 (EPP)

Provides a framework for management and regulation of point and diffuse sources of emissions to air for pollutants with potential to cause environmental harm.

Environmental values to be protected under EPA are;

The life, health, well-being of humans at present and in the future,
The life, health and well-being of other forms of life,
Visual amenity. Etc.

EPA claims:

- Councils are the correct people to be dealing with when it comes to back yard burning.
- Individual councils can enact By-laws to restrict burning on blocks greater than 2000 square meters. - Ellis Cox 12/6/2012.
- The 2000 square meter criterion is considered to be a reasonable compromise for State-wide default.
- On land more than 2000 square meters DAE may not apply. Fire mitigation, back burning?
- This does not mean fires can be lit with impunity.
- There is no entitlement under the legislation for any property owner or occupier of a property to light fires and burn off vegetation wastes and cause nuisance smoke.

- The emission of pollutants into the atmosphere from any premises other than residential is specified as a proscribed offence

Local Government of Tasmania (LGAT) claims: – Mr. Garcia CEO, 12.6.2012

- The 2000 block size presents its own set of difficulties.
- Councils have responsibility for management of smoke issues on blocks less than 2000 square meters and the EPA for those over 2000 square meters.
- A By- laws is not an area that councils can venture after receiving advice. Principal legislation overrides subordinate legislation.
(where the LGAT CEO, says, "...Advice received suggests that burning vegetation in an area greater than 2Ha.." this is not correct. 2Ha is 20,000 meters, not 2000 square meters).
- If burning is to be undertaken; the conditions and times be the least offensive. **Offensive does not mean harmful**
- It is not proposed to seek or extend the responsibility for smoke management by local councils.
- It is hoped offenders can be persuaded to consider and develop alternative vegetation management practices.
- **DAE Regulations Implementation Evaluation Report 2010:**
LGAT response to the survey was:
 - Councils generally do not have the resources to be proactive in this area.
 - Councils do not see it as their role to educate the public about regulations.
 - In relation to community public relations, councils are in an invidious situation while large scale burn-offs continue.
 - Local government does not generally consider backyard burning to be of high priority at present.

LG: West Tamar Council – Rolph Vos 22/12/2011

- This (legal advice) closes the door on an avenue you were hopeful would bring you some relief.
- To address this situation State legislative change is needed.

WTC – Rolph Vos 22/2/2012

- Based on previous discussions with Councillors, I do not believe they are willing to support (a By-law) at this time.
- Your smoke issue is not an isolated one.

WTC – Beacon Newsletter September 2011

"Burning off in West Tamar"

- One of the main reasons (for the under 2000 square meter regulation) is due to the sensitivity of the Tamar valley airshed and its air quality.
- There is considerable amounts of smoke being emitted into the airshed from other sources.
- Any additional contributions has significant effect on the airshed, air quality, and other people's enjoyment of the environment.
- For blocks more than 2000 square meters with no other options than burning..
- When burning waste is absolutely necessary it may only be undertaken if it does not cause environmental nuisance.

Summary:

- It would appear it is lawful for anyone to burn on a property greater than 2000 square meters.
- It would appear that the subordinate 2000 square meter regulation is inconsistent with EMPCA and the EPP. It allows wide-scale; uncontrolled burning that causes environmental nuisance and harm to people and other forms of life, and affects our amenity across Tasmania. It does not prevent or reduce environmental harm; in fact it does the opposite.
- Councils and LGAT are not interested in dealing with the smoke issue on properties over 2000 square meters. LGAT say they have no intention of taking over smoke management.
- LGAT are in disagreement with the EPA.
- The EPA maintains councils can enact By-laws. LGAT says they cannot.
- The EPA claim there is no entitlement for a property owner to light fires and cause nuisance smoke. Under the legislation LGAT/councils say they can.
- LEGAT uses the word 'offensive' rather than 'harmful'.
- The EPA wrongly judge. "... a 2000 square meter criterion is considered to be a reasonable compromise for State-wide default." Very high and sustained levels of smoke are, as a result of the 2000 square meter regulation, being forced on individuals against their will.
- West Tamar Council says it is not illegal for a burner to do this
- West Tamar Council have said the door is closed on residents being afforded some relief (from uncontrolled and unpoliced burning).
- Toxic smoke has no boundaries.