



11 December 2013

The Hon. Robyn Parker, MP
Minister for the Environment
Level 32 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

Proposed changes to Environmental Protection Licence Administration Fees

We are writing to you to express the concerns of the NSW business community regarding the proposed changes to the calculation of Administration Fees for Environmental Protection Licences (EPL).

The proposed changes would provide a small 5% licence fee discount to category A performers. While such incentives for good performance are welcome, under the proposed changes many licensees who fail to meet this threshold will face substantial fee increases of up to 300%, even if they have only minor compliance issues.

Furthermore, as the proposed system is based purely on a multiplier of current administration fees, and given these currently vary between \$452/year and \$299,450/year, the same minor compliance issue could mean a \$1,130 increase for one operator as opposed to a \$598,900 increase for another, this is totally unjust and inequitable.

We are supportive of risk based regulation as it provides an incentive to licence holders to improve their performance and can also assist the EPA in increasing the efficiency of its inspectorate. However, the EPA has not sufficiently explained how the link between fee changes and changes in the probability and cost of environmental incidents has been calculated.

The EPA has made it clear that the main purpose of the proposed changes is to provide increased financial incentives to improve compliance. However, there is no evidence of widespread compliance problems. The EPA advises that around 10-20% of licensees would face an increase in fees under the proposed changes, but according to the EPA's 2012-13 Annual Report 99.6% of licensees complied with licence conditions and only a small proportion of penalty notices and prosecutions related to licensees. Perversely, since the EPA has correctly designed the scheme to be revenue neutral, this high level of compliance has actually led to higher penalties to offset the large number of discounts for good performers.

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There is no evidence that additional financial penalties in the form of higher administration fees will improve compliance. Poor performers already face significant penalties, including fines, clean-up costs and reputational damage. Residual compliance issues are likely to be the result of technical challenges or a poor understanding of the rules and these issues are more likely to be overcome through greater support and guidance.

We are also concerned that providing additional penalties through fee increases rather than fines undermines due process and creates perverse incentives since fee revenue is returned to the EPA.

At a time when the community and business are adjusting to a likely protracted low growth period with attendant impacts on employment, the proposed fee multiplier change is ill-advised. A fairer approach would be to adopt an additive fee system if any at all.

The largely punitive approach proposed by the EPA starkly contrasts with the approach taken in other states. For example, Queensland provides a cumulative fee discount of up to 50% for good environmental management and Victoria uses its risk assessment tool to ensure more consistent and targeted enforcement efforts and greater flexibility in licence condition for good performers.

The move to a risk based approach to compliance is supported, but the approach should have a better balance of stick and carrot. Details on how good performers can be rewarded with increased self-regulation would be welcomed. Increased control over licence conditions, especially monitoring conditions would provide more balance in the risk based framework.

We propose that NSW adopt some of the concepts under the Victorian approach where good performers are rewarded with increased influence over their licence conditions. Using the risk assessment framework to also focus on more targeted and consistent enforcement and to provide increased incentives for good performers is also recommended.

Failure to appropriately address these issues will erode NSW competitiveness and provide a disincentive for new investment in this state. We note that Goal 4 under the NSW 2021 State Plan is to *Increase the Competitiveness of Doing Business in NSW*. We encourage you to consider this objective prior to finalising the new licence framework.

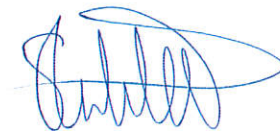
We have copied this letter to the Premier, Hon. Barry O'Farrell.

To discuss this letter further, please feel free to contact Paul Orton, Director of Policy and Advocacy at the NSW Business Chamber on 9458 7462 or at paul.orton@nswbc.com.au.

Yours sincerely



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