



Mark Speakman
Minister for the Environment
Minister for Heritage
Assistant Minister for Planning

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Mr David Blunt
Clerk of the Parliaments
Parliament House
Macquarie St
SYDNEY NSW 2001

Dear Mr Blunt

Please find attached the Government's response to the Legislative Council General Purpose Standing Committee No. 5 inquiry into the Performance of the NSW Environment Protection Authority.

I request that this be tabled in Parliament at your earliest convenience.

If you have any queries, please contact Bran Black, my Chief of Staff on

Yours sincerely

Mark Speakman
Minister for the Environment

Enclosure

Attachment B

NSW Government Responses to the Upper House Inquiry Recommendations

Recommendation 1

That the NSW Government amend the Protection of the Environment Administration Act 1991 to provide for the appointment of a chairperson of the board independent of the Chief Executive Officer of the NSW Environment Protection Authority.

▪ **Response to recommendation 1:**

Noted. The Government is currently reviewing the governance framework for all statutory entities in NSW. The governance regime of the NSW EPA will be one of the first entities to be reviewed under this framework.

Recommendation 2

That the NSW Government amend the Protection of the Environment Administration Act 1991 so that the Governor, on the recommendation of the portfolio Minister, and with the concurrence of the board, appoint the Chief Executive Officer of the NSW Environment Protection Authority.

▪ **Response to recommendation 2:**

Noted. If the Governor were to appoint the CEO then the NSW EPA would have a situation where the Chair, Board Members and the CEO are all appointed by the Governor. This does not occur currently with any other Statutory Bodies in NSW.

Recommendation 3

That the NSW Government amend the Protection of the Environment Administration Act 1991 to provide that the board of the Environment Protection Authority has a performance management agreement with the Chief Executive Officer.

▪ **Response to recommendation 3:**

Noted. However, if the Governor appoints the CEO as per recommendation 2 then a question arises as to whether the Performance Management agreement between the Board and the CEO could permit the Board to terminate the CEO.

Recommendation 4

That the NSW Environment Protection Authority appoint an independent chair to the Independent Review Steering Panel overseeing the Orica Mercury Independent Review

▪ Response to recommendation 4:

Noted. In March 2014, the Independent Review Steering Panel considered the appointment of an independent chair. The Steering Panel determined it would not seek a new chair but requested the EPA board to seek a recommendation from the Minister for the Environment to appoint an independent science expert. Emeritus Professor Chris Fell was subsequently appointed.

Recommendation 5

That the NSW Environment Protection Authority prioritise the development of a communications and engagement process to consult and inform local residents of the activities of the Independent Review Steering Panel overseeing the Orica Mercury Independent Review and publicly release the results of any testing undertaken.

▪ Response to recommendation 5:

Supported. A communication and engagement strategy has been in place since the Independent Review Steering Panel Report was handed down. Information about the Orica Mercury Independent Review Stakeholder Engagement Schedule is publicly available on the EPA website. The EPA has communicated with the local community through various channels including two letter box drops to 4500 and 3000 residences, 3 public forums, print and social media and regular face to face meetings with key stakeholders.

The findings from stage one of the Botany Orica Mercury Independent Review that the risk of off-site contamination is low were published in January 2014. The findings of the stage two comprehensive environmental testing program were published on 5 May 2015. The results show mercury concentrations in soils, air, sediments and fish are low to very low. A community forum was held on 3 June to present the findings to the community.

Recommendation 6

That the NSW Environment Protection Authority consult with the new Chief Scientist and Engineer to review the air quality monitoring strategy in the Upper and Lower Hunter, including a survey of international data and policy responses to the issue, and request recommendations to devise a monitoring network that will assist with any knowledge gaps and strengthen the confidence of the community. The response from the NSW Environment Protection Authority should include its advice on the method of funding this monitoring network.

▪ Response to recommendation 6:

Supported. Significant work has already been undertaken on this issue by both the NSW Government and the private sector. The EPA and the Office of Environment and Heritage

(OEH) have also committed to a review of the principles and requirements of air quality monitoring in New South Wales.

- The first stage of the review will focus on the NSW Government's ambient air quality network, operated by OEH, and the industry funded, government operated air quality monitoring networks in the Upper Hunter and Newcastle local areas. The EPA levies industries which hold an environment protection licence, and that have an impact on Hunter Valley air quality, to pay for the operation of the Upper Hunter and Newcastle networks.

The EPA and OEH will ask representatives from external stakeholder organisations to be part of an advisory panel to provide input and review key deliverables. This panel will include representatives from each of the following disciplines: air quality research; environmental health research; the community and an air quality monitoring practitioner from another jurisdiction. The Chief Scientist and Engineer has nominated, Dr Chris Armstrong, from her office for inclusion on the stakeholder advisory panel.

Recommendation 7

That, in the event that the Chief Scientist recommends that all coal trains be fully covered and all empty wagons be washed to reduce coal dust emissions, the NSW Environment Protection Authority amend the relevant licences to adopt the Chief Scientist's recommendation.

- Response to recommendation 7:

Noted. The Chief Scientist and Engineer has agreed to undertake a review of rail coal dust emissions management practices. This will include review of the work the EPA has undertaken in relation to coal dust emissions along the rail corridor in the Hunter Valley, as well as review of environmental monitoring, the literature, and the environmental management practices of operators using the rail network.

Recommendation 8

That, in consideration of the high level of community concern about the health and environmental impacts of the coal seam gas industry, investigations into significant pollution incidents should be led by independent experts working with the NSW Environment Protection Authority, not the coal seam gas company under investigation.

- Response to recommendation 8:

Not supported

The new NSW Gas Plan introduces strong and certain regulation with the EPA as the regulator responsible for all compliance and enforcement of conditions of approval for gas activities in NSW (with the exception of work health and safety). The EPA has been established as an independent environmental regulator and delivers these services on behalf

of the NSW Government. The EPA has a legislative responsibility, under the Protection of the Environment Administration Act 1991, to investigate and report on alleged non-compliance with environment protection legislation. During these investigations the EPA's skilled investigators utilise the expertise of external and in house specialists, as well as information licensees are legally required to provide to the EPA.

- The EPA does not permit companies to "lead" investigations.

Recommendation 9

That the NSW Environment Protection Authority conduct a comprehensive review of its licensing procedure for hazardous chemicals. The review should examine the appropriateness of granting environmental protection licences that do not provide clear limits with respect to the use of hazardous chemicals. Further, the review should also consider the appropriate recourse to be taken against a licensee for failing to maintain concentrations within specified limits.

Response to recommendation 9:

Supported. The EPA is reviewing the Environmentally Hazardous Chemicals Act 1986 (EHC Act). Environment Protection Licences currently have concentration limits for pollutants. The EPA's new risk based licensing system will provide additional information relevant to these limits. The risk assessments examine the licensed activity, the associated pollutants and controls, the receiving environment, and operator performance to determine environmental risk. This structured assessment will ensure that the activity receives the appropriate level of regulation based on the level of risk posed to human health and the environment by the activity.

The EPA is also currently reviewing the Load Based Licensing (LBL) polluter pays scheme. In relation to recourse for failing to maintain concentrations within specified limits, the EPA's publicly available Compliance Policy and Prosecution Guidelines provides the framework for determining the appropriate regulatory response based on a range of factors including environmental risk. This framework applies an escalated response to address non-compliance. The Protection of the Environment Operations Act allows the EPA to issue further penalties for each day an offence continues.

Recommendation 10

That the NSW Government amend the Protection of the Environment Operations Act 1997 to require cruise ship terminals to hold an environment protection licence.

▪ Response to recommendation 10:

Not supported.

The environmental conditions in the Development Consent for White Bay, along with existing and proposed mechanisms for managing noise and air quality issues, preclude the need for an environment protection licence. For example, improved environmental outcomes will be delivered through a combination of a new regulatory requirement to use low sulphur fuel, the ongoing development of noise mitigation strategies and an investigation of shore power.

The new draft regulatory requirement for the use of low sulfur fuel by 1 October 2015 was released by the EPA for public consultation on 3 June 2015.

Recommendation 11

That the NSW Environment Protection Authority immediately approach the National Environment Protection Council to request a review of the air pollution limits set under the National Environment Protection Measures.

▪ Response to recommendation 11:

Noted. The EPA, on behalf of the NSW Government, has for the past two years been leading the review of the National Environment Protection (Ambient Air Quality) for the standards for particles as PM_{2.5} and for PM₁₀. At the meeting of Environment Ministers held on 15 July 2015, the Ministers signalled their "in principle" support for varying the National Environment Protection (Ambient Air Quality) to implement strengthened reporting standards. The Ministers agreed to finalise their consideration of this matter by 31 December 2015.

The Victorian Government is now leading the review of the National Environment Protection (Ambient Air Quality) Measure in relation to sulphur dioxide, ozone and nitrogen dioxide. The EPA is contributing to this process on behalf of the NSW Government. In addition, the Port Authority of NSW has implemented a voluntary air monitoring regime which, amongst other things, will monitor PM_{2.5}.

Recommendation 12

That the NSW Government require that:

- cruise ship operators using the White Bay Terminal be required to develop noise mitigation strategies and that noise be monitored and limits be enforced
- the White Bay Terminal be retrofitted to include shore to ship power.

- Response to recommendation 12

Noted. The NSW government acknowledges the concerns of the Balmain community regarding noise and air emission impacts of cruise ships and the White Bay Cruise Terminal. In the context of Sydney being Australia's leading cruise ship destination and the importance of enabling Sydney's valuable strategic and economic port and tourism industries, the NSW Government is committed to outcomes that will best balance the interests of all stakeholders.

In response to community concerns the Port Authority continues to work with the cruise industry to deliver changes to operational practices that generate noise (e.g. external announcements) and suspended all overnight cruise ship visits to White Bay until the new low sulphur fuel regulation is introduced.

Further air monitoring will measure the benefits of the use of low sulphur fuel. At the same time, the Port Authority will undertake a feasibility study of shore power.

The Port Authority of New South Wales commissioned independent consultants to monitor noise during terminal operations at White Bay and these results are publicly available on its website.

Recommendation 13

That the NSW Government allocate significant additional funds to the Environment Protection Authority to further train staff and to facilitate the appointment of additional personnel to the Forestry Section.

- Response to recommendation 13:

Supported. The NSW Government has included in the EPA 2015-16 budget additional funding for forestry of \$1.272 million for this financial year to increase staffing levels.

Additional funding for the longer term to provide an ongoing increase in resources will be considered as part of the 2016-17 Budget setting process.

Recommendation 14

That the NSW Environment Protection Authority, as part of its public engagement and communication strategy, make greater use of community consultation committees, ensuring they are transparently evaluated and engender genuine participation.

- Response to recommendation 14:

Supported. The EPA is developing protocols and processes to assist staff in their communications especially with external committees. The EPA is reviewing its advisory committees in relation to their functions, governance and documentation, with a view to establishing consistent approaches and consultation practices.

The EPA is developing a standardised framework that can be applied to advisory committees, for both community and expert based groups. This framework will provide consistent terms of reference, the recommended number of members and breadth of representation to engender participation. In addition, the EPA is developing appropriate methods for evaluating these committees.

To facilitate these community consultation processes, the EPA has developed the Engagement Guidelines which outline how and when the EPA informs, consults and involves stakeholders in all aspects of its work. The guidelines highlight the EPA's focus on improving its communication and consultation activities, and clarifies how and when the EPA informs, consults and involves community, environment groups, government and industry. The guidelines are available on the EPA website and in brochure format.

Additional funding for the longer term to provide an ongoing increase in resources will be considered as part of the 2016-17 Budget setting process.

Recommendation 15

That the NSW Environment Protection Authority be adequately resourced to clear the backlog of contaminated sites awaiting assessment, as well as develop systems to ensure contaminated lands are assessed in a more timely manner.

▪ **Response to recommendation 15:**

Supported. Funding of \$1.438 million has been allocated this financial year to the Contaminated Lands Program to improve both the systems and the rate at which backlog sites are able to be assessed. Additional funding has been secured for 2015-16 to address the backlog legacy. Additional funding for 2016-17 will be considered as part of the 2016-17 Budget setting process.

Recommendation 16

That the NSW Environment Protection Authority take immediate steps to refine and enhance stringent internal protocols and procedures to ensure timely public communication of all pollution incidents.

▪ **Response to recommendation 16:**

Supported. Incidents in which the EPA is involved are now communicated through multiple channels, for example, when the incident potentially or actually poses a risk to human health or the environment the EPA communicates via Twitter, media release and directly with the community involved. In addition the EPA's media policy has been updated to ensure that regulatory actions are communicated via a media release and tweet to all relevant media.

Recommendation 17

That the NSW Environment Protection Authority make greater use of Protection of the Environment Policies, available to it under the Protection of the Environment Operations Act 1997, and give serious consideration to applying a multiplier effect for penalty notices to repeat offenders and setting maximum pollution or emissions caps for zones and regions.

▪ **Response to recommendation 17:**

Supported in principle. When addressing environmental issues or problems the EPA considers the most effective response. The EPA has used tools other than Protection of the Environment Policies (PEPs) to achieve its objectives and deliver improved environmental outcomes.

The EPA is currently examining the applicability and efficiency of a PEP to guide decisions that affect the environment, in particular in relation to air quality. As part of the review of the ambient air quality NEPM, the EPA is examining a number of potential options to assist with the implementation of any new NEPM standards.

With respect to repeat offenders the EPA applies an escalating regulatory response to breaches of environmental legislation, as articulated in the EPA Compliance Policy.

Under the Protection of the Environment Operations Act 1997 (POEO Act) there is a three-tiered structure of offences with the most serious offences attracting the highest penalties. As per the EPA's Prosecution Guidelines, simultaneous or successive penalty notices are not generally issued for multiple or ongoing breaches of the legislation. In these cases, there is obviously a continuing environmental or compliance problem, even though each breach may be comparatively minor. These are usually dealt with by issuing an appropriate statutory notice or through court proceedings.

With respect to pollution or emission caps, the EPA considers the sensitivity of the receiving environment when reviewing development or licence applications. The EPA's advice on development applications and the level of controls placed on licences reflect the level of environmental risk. Other regulatory tools, including the EPA's load based licensing scheme, critically examine the sensitivity of the receiving environment when setting pollutant load limits and calculating the amount of pollutant fees to be paid.

In addition the EPA has successfully developed and implemented emissions and economic trading schemes to cap pollutant emissions in a region or receiving environment. For example, the 'bubble' licensing scheme is a small, self-contained, emissions trading scheme in the South Creek area of the Hawkesbury-Nepean River that allows the three participating sewage treatment systems to adjust their individual discharges, provided the total pollutant

load limit for the scheme is not exceeded. The Hunter River Salinity Trading Scheme sets a variable cap on the amount of saline water that can be discharged by licensed activities depending on river flow and provides a scheme for trading discharge credits.

