



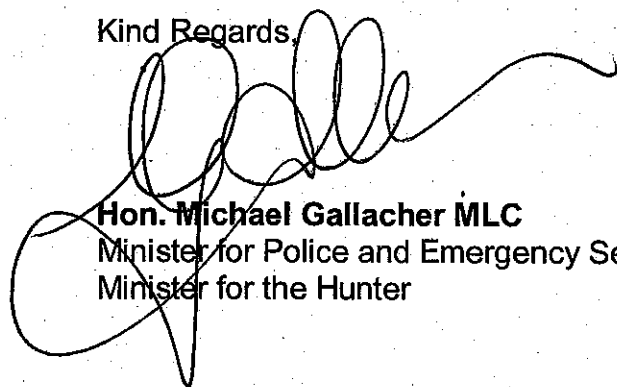
The Hon Michael Gallacher MLC
Leader of the Government in the Legislative Council
Minister for Police and Emergency Services
Minister for the Hunter
Vice-President of the Executive Council

Mr David Blunt
Clerk of the Parliaments
NSW Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Blunt

Please find the NSW Government response to the report of the Select Committee on the '*Kooragang Island Orica Chemical Leak*' for tabling in the Legislative Council.

Kind Regards,



Hon. Michael Gallacher MLC
Minister for Police and Emergency Services
Minister for the Hunter

NSW GOVERNMENT RESPONSE TO THE REPORT OF THE SELECT COMMITTEE ON THE KOORAGANG ISLAND ORICA CHEMICAL LEAK

Government Reform Package

The 8 August 2011 incident at Orica Australia's Kooragang Island facility was a serious pollution incident that is subject to prosecution by the Environment Protection Authority.

Following the Orica incident, the NSW Government moved quickly to introduce an extensive reform package to strengthen environmental regulation, which included legislative amendments under the *Protection of the Environment Legislation Amendment Act 2011*.

Central to the Government's reforms was the establishment of the Environment Protection Authority (EPA) in the 29 February 2012 as an independent, accountable and modern regulator. The EPA is now operationally separate from Office of Environment and Heritage with strengthened powers and Board, a new Chair and a new Chief Environmental Regulator.

Environmental legislation has been amended to include the following:

- Requiring industry to report pollution incidents immediately (rather than as soon as practicable) to all relevant response agencies and doubling the penalties for failing to do so. These new provisions are aimed at ensuring that industry and relevant response agencies are able to act promptly and without delay to pollution incidents.
- Requiring all holders of environment protection licences to prepare, implement and test pollution incident response management plans. The plans must include actions to protect communities and the environment from a pollution incident, and clearly specify procedures to inform local communities.
- Improving access to information about industry performance. Licensees are now required to make publicly available monitoring data collected as a result of a licence condition. Additional information about EPA regulatory actions are now also available on the EPA's web-based public register.

Increased EPA regulatory intervention

The reinvigorated and strengthened EPA is taking a tough stance on industries that pollute the environment, with detailed monitoring of environmental risks and strong regulatory action taken when breaches are identified. Examples of this are:

- Completion of a comprehensive audit program targeting industries that pose a high risk of environmental harm. Audits were conducted at 40 high risk facilities that store toxic, hazardous or dangerous substances in large quantities or volumes. The audits focused on the management of the potential risks to human health and the environment, and the adequacy of

emergency response procedures for managing major environmental incidents. The audit findings are available on the EPA's web site. Regulatory action included the issue of penalty notices and prevention notices requiring issues identified to be addressed by licensees.

- The successful prosecution of 56 cases in the last 12 months.
- A program of ongoing inspections and compliance campaigns focusing on significant environmental issues.

EPA regulatory oversight of Orica, Kooragang Island

The EPA is continuing to closely monitor the Orica Kooragang Island facility to ensure the company fulfils its responsibility to operate the plant in a manner that minimises its impact on the local community and the environment, Actions undertaken to date include:

- A comprehensive mandatory environmental audit of the plant by an independent auditor is underway. A report on the first stage of the audit was submitted to the EPA in June 2012 with the remaining components of the audit due to be completed by July 2013.
- The establishment of the Orica Kooragang Island Start Up Committee on 7 September 2011 with representatives of State agencies and local government. The Start Up Committee oversaw the implementation of additional procedures and safeguards before approval was granted to re-start the Ammonia Plant. Approval was granted to re-start the plant in December 2011.
- The EPA is prosecuting Orica for four pollution incidents, including for the 8 August 2011 incident. These matters are to be heard in the Land and Environment Court in December 2012.
- 12 legally binding Pollution Reduction Programs have been added to Orica's environment protection licence targeting a range of works to improve the facility's overall performance. The cost of this work is estimated to exceed \$20 million.

Community Engagement

The Minister for the Environment has established the Newcastle Community Consultative Committee on the Environment as a forum for people living in the Newcastle area to identify important environmental and amenity issues associated with nearby industrial activities. It also helps local industry understand the community's concerns.

The Committee has representatives from the community, environment groups, industry and local government, with EPA secretariat support. The first meeting of the Committee was held on 4 November 2011, with the Committee continuing to meet on a regular basis.

Improved responses to pollution incidents

As part of the Government's reform package to improve the reporting, communication and management of pollution incidents, agencies have been

working together closely since the 8 August 2011 Orica incident to ensure that pollution incidents are responded to quickly and effectively. Initiatives include the establishment of an inter-agency response group, and the development and implementation of a protocol for responding to and coordinating pollution incidents.

The EPA has also made improvements to its pollution incident response management framework, with a dedicated team to support responses to serious pollution incidents, the implementation of formal operating procedures and an enhanced training package for staff responsible for responding to incidents.

The EPA has revised its "Early Alert" system as recommended by the O'Reilly Review, with the EPA Executive and the Minister for the Environment's office now receiving urgent advice about serious pollution incidents. In addition major changes have been made to the way reports of pollution incidents are recorded, actioned and tracked with the publicly available "Environment Line" now linked to a new workflow management system.

NSW GOVERNMENT RESPONSE TO INQUIRY RECOMMENDATIONS

Recommendation 1:

That the Premier issue clear and unambiguous guidelines to all Government Ministers specifying the timing of notifications to the public of any matters that may affect public health or safety.

Response:

Supported in principle.

The Government believes that the public should receive timely notification of matters that may affect public health or safety. This notification should be issued by the most appropriate person or agency depending on the circumstances of the incident. This may include the Environment Protection Authority, Chief Health Officer and Police or Emergency Services.

The Government has reviewed the notification processes and has implemented a number of improvements to ensure that the public is notified without delay about incidents that may affect public health or safety.

These improvements include the implementation of an inter-agency protocol to ensure responses are well co-ordinated and communicated effectively.

In addition, as part of the Government's reform package, industry is required to report pollution incidents immediately – this has resulted in agencies being able to respond to incidents and notify potentially impacted members of the community without delay. Industry is also now required to inform the public and industrial neighbours when a pollution incident occurs.

Recommendation 2:

That the Office of Environment and Heritage amend its operating procedures for the Environment Line to ensure that there are clear obligations to pass on information relevant to other agencies, to those agencies in a timely manner.

Response:

Supported.

Procedures are already in place for the Office of Environment and Heritage's (OEH's) Environment Line to refer information to relevant agencies. The EPA has amended its operating procedures and response staff are now required to contact all relevant agencies as a matter of urgency when a serious pollution incident has occurred.

As mentioned in the Government's response to recommendation 1, response agencies have implemented an inter-agency protocol for responding to pollution incidents.

These measures are in addition to the strengthened requirements for industry to notify all relevant response agencies of pollution incidents (EPA, local

councils, Ministry of Health, Fire and Rescue NSW and WorkCover Authority), as well as ensuring potentially affected members of the community and industrial neighbours are notified.

Recommendation 3:

That OEH's testing procedures for determining the impact of pollution incidents incorporate additional requirements for the checking and verification of results before those results are released.

Response:

Supported.

Procedures have been changed to ensure that results are validated by experienced personnel using established quality assurance protocols so that accurate information is made available to response agencies and the community.

Recommendation 4:

That the Office of Environment and Heritage require Orica to engage and fund appropriate independent experts to oversee any modifications to the plant in the next major maintenance overhaul of the plant in 2016 and in any upgrades to the plant prior to that date.

Response:

Supported.

The EPA required Orica to engage independent experts, including a qualified engineer, to review and report on the causes of the 8 August 2011 incident and make recommendations for any future upgrades of the Ammonia plant. The experts' findings were used by the Orica Start Up Committee in determining whether it was safe for the plant to re-start operations.

The EPA will ensure that Orica engages appropriate independent experts for future major maintenance overhauls or upgrades.

Recommendation 5:

That as part of the pollution incident management response plan to be developed for Orica's Kooragang Island site, or by another appropriate mechanism, the Office of Environment and Heritage ensure that Orica's incident response procedures address the need to consider all relevant factors when assessing potential impacts, including the height and force of emissions as well as the location of any onsite fallout and whether there are off-site impacts following all serious incidents.

Response:

Supported.

All environment protection licensees are required to prepare a pollution incident response management plan and have them in place by 1 September

2012. The matters that must be included in plans are prescribed by Regulation, and include the consideration of all relevant factors when assessing potential impacts. The EPA has also released a guideline to assist licensees to prepare plans.

The EPA will ensure that Orica's pollution incident response management plan addresses all potential impacts relevant to the facility's operation.

Recommendation 6:

That, when developing requirements concerning pollution incident response management plans pursuant to the recent legislative amendments, the Office of Environment and Heritage include appropriate definitions as to the meaning of 'immediately' and when 'material harm to the environment is caused or threatened'.

Response:

Supported in principle.

The Government agrees that it is important that industry is able to clearly identify when pollution incidents need to be reported.

All environment protection licensees are required to prepare, implement and test pollution incident response management plans. Plans must include an identification of risks and the development of planned actions to minimise and manage those risks, if an incident occurs. Licensees must also ensure that the plan can be properly implemented, and that any risks associated with the incident are effectively communicated to response agencies and potentially affected people, within and outside the facility.

While the pollution incident response management plan requirements apply to licensees, the duty to notify of pollution incidents applies to anyone carrying on an activity or occupying a premise who becomes aware of a pollution incident, including if there is actual or potential harm to the environment. The EPA has therefore provided guidance on the duty to notify of pollution incidents more broadly via its website, rather than as part of the pollution incident response management plan requirements. The guidance includes a summary of the requirements and some examples of circumstances where the requirements apply. The guidance is based on issues and queries raised during information sessions and other feedback from industry and other stakeholders.

Recommendation 7:

That, if necessary, regulation to be amended to require Health to approve any script used by any party concerned, for door knocking or other information dissemination, if Health is not the first source of information to affected residents.

Response:

Partially supported.

The Government agrees that it is important that health information provided to the public is timely, accurate and consistent.

NSW Health will develop and issue health information to affected communities when necessary. The timely release of this information will be facilitated by the measures described above that improve notification and interagency communication.

In addition, NSW Health has developed a template to ensure that health information provided to the public is relevant and useful. NSW Health will assist other government agencies and private organisations to develop health information when required.

However, the Government does not consider it necessary to amend regulations to require NSW Health to approve all wording used by any party in issuing public health information.