

ASBG Comments on The EPA's Licensing Guidelines: Environmental Risk Levels

ASBG welcomes the opportunity to comment on the draft EPA Licensing Guidelines: Environmental Risk Levels document at this early stage. Overall the document is a fair draft covering many of the basic areas in which it is designed for in a general concept manner.

Overarching this document is the principle of negotiation of Environmental Protection Licences under the POEO Act. As such, the Guidelines are to assist both the EPA and the Licensee in setting new licence conditions if necessary based on the new Environmental Risk Based Licensing Framework. A principle objective of the Guidelines is to permit, if sought, a higher level of self regulation for lower risk licensed sites.

The Guidelines do provide some increase in self regulation for lower risk sites, though this is limited and it is preferred is further incentive is provided to risk level 1 sites via increased flexibility in EPL conditions especially on monitoring.

Most of the flexibility appears summarised in table 1 which is the focus of some of the recommended variations.

Monitoring

It is appreciated that the structure of NSW Environmental legislation requires the application of standard limits, sampling and analysis techniques. Typical example are air emission limits under the *POEO(Clean Air) Regulation*. Let's call such monitoring *minimum legislative monitoring*. There are many examples where monitoring conditions extend far beyond this, such as use continuous monitoring commonly appearing.

Changes to the monitoring regimes of EPLs with low risk, but have monitoring conditions over and above a the minimum legislative monitoring requirement is one potential area where Level 1 sites should move to the minimum levels.

As a consequence, of the above, table 1 does go towards this process, with the line:

Monitoring may be required at the minimum frequency to be representative.

ASBG recommends that this be reworded to:

Monitoring should be required at the minimum frequency to be representative.

The 'should' is not a 'shall' or 'must', so a level of flexibility is still there for variations to the theme, but provides a clearer intent to move to this position.

For level 1 and level 2 risk sites there is scope to permit a reduction in a monitoring program from a high frequency to one lower, if a reasonable dataset can establish a clear improvement in

performance. This may occur over a number of years with each demonstrating an improving trend. Ultimately, that substance/s could over time be dropped from the EPL altogether. Again this would only apply to sites with higher levels of the minimum legislative monitoring required.

If non-minimum legislative monitoring regime exists for a pollutant from a level 1 site, then an alternative monitoring regime should be permitted replace it. Such a new alternative monitoring regime approach would be risk based, extending the concept of Risk Based Licensing to the monitoring program. To provide for greater reassurance from the EPA such monitoring programs could be audited on a regular basis by a third party auditor.

To place this in the Guidelines the Example provided in the Guidelines could be amended to include for level 1 licences that the last sentence on page 8 be changed to:

This may include checking that a licensee is monitoring the strength and volume of effluent generated and soil conditions, and whether any samples have been collected and analysed in accordance with Australian Standards, the EPA's approved methods or other accepted monitoring regime. Use of an alternative monitoring regime will generally be risk based and can include auditing by a third party.

There are many examples where there are no Australian Standards or there is reference in a licence to old defunct international standard.

Overall there are many issues with monitoring. Increased flexibility and even modernising monitoring techniques replacing outdated and costly methods are common calls from members. While the Guidelines can cover some aspects of how monitoring can be addressed at EPL levels, there remains many issues monitoring.

ASBG recommends that monitoring in general be subject of future discussion with ASBG and our members.

EPL Conditions Generally

Under table 1 it states:

Level 1 licences will generally be regulated through mandatory conditions

This could be made stronger with

Level 1 licences will be regulated through mandatory conditions.

This phrase is to limit ad hoc licence conditions which may have accumulated over years for a certain site. If the goal is reward risk level 1 licences then a review, reduction and potential removal of additional 'non-mandatory' conditions would provide a strong incentive.

Again the changes to the general conditions be a risk based consideration.

Pollution Incidents and Issues

Variations to EPL are considered to generally take several months in most cases, but some can be implemented quickly. Further the process of establishing a risk level can take up to a year to formally change.

Where a site has a low risk level, but then incurs an incident is an example where a PRP could be applied. Under this scenario the Guidelines do not comment. Perhaps there is scope to cover the predicted change to a risk level following an incident or incur negative points under the RBL framework.

However, following such an event for a site with a long term risk level 1 the changes to the EPL should be limited to the incident or actions which caused the breach, unless systemic issues are identified.

Lets say the following occurs:

1. An EPL moves from risk level 2 to Risk level 1 and reduces the monitoring regime and other conditions associated with the licence,
2. It then incurs an issue which makes them Level 2 again

ASBG recommends they do not resort back to the original licence conditions prior under risk level 2, but have an amended EPL which addresses the issue.

The above has been prepared in a short period of time and further issues may arise as analysis continues.

A few members of ASBG were involved in assessing the draft and this is a reflection of the collective ideas.

Should you require further clarification please contact me.

Yours Sincerely

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