

8 February 2012

Environment Protection Authority
PO Box A290
SYDNEY SOUTH NSW 1232

primp@environment.nsw.gov.au

Dear Sir/Madame

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *Pollution Incident Response Management Plans: Proposed Amendments Under the POEO (General) Regulation 2009*.

The Australian Sustainable Business Group (ASBG) is a leading environment and energy industry representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 150 members comprising of Australia's largest manufacturing companies.

ASBG strives to assist regulatory agencies to prepare more efficient regulatory process, with the outcome of achieving practical, low cost solutions to achieve higher environmental outcomes.

This submission will focus on the following issues with the Notes including:

1. Consultation
2. Publication of PIRMPs
3. Scope and scale of PIRMPs to be better defined
4. Clarification on the testing of PIRMPs
5. Other issues requiring clarification

1. CONSULTATION

ASBG is concerned over the consultation of this substantial change to internal mechanisms for Environment Protection Licence holders. One public information session, and a very short, three week consultation period is considered minimal. Given the lack of any formal process for consultation over the supporting legislation can only rate this overall consultation as poor.

The EPA has already indicated that further guidelines and clarification will be generated as a result of the public information sessions and early comment. As a consequence, ASBG would expect further consultation would be undertaken to ensure a quality regulation. It was assumed that further public consultation would include the amended regulation having a Regulatory Impact Statement prepared as required under the [Subordinate Legislation Act 1989](#) (SBLA) and the appropriate guidelines issued by the Better Regulation Office's [Guide to Better Regulation](#) will be followed. However, at EPA's Public Information session on 30 January 2012, this issue was raised and the response was that the RIS process would not be undertaken. As a consequence, the regulation will also by-pass the SBLA and Better

Regulation Office's process. ASBG can only express disappointment at this action, as the regulative change will result in substantial costs to our members and EPL holders.

Unfortunately, this process follows on from the introduction of the Protection of the Environment Operations Amendment Legislation Act 2011, in which no public consultation was undertaken. ASBG is further concerned about the lack of notification and education provided to business, industry and the public, over the current requirements to immediately report to five agencies on environmental incidents of material harm.

2. ACCESS OF PIRMPs TO THE PUBLIC AND OTHERS

Under the proposed regulation, PIRMPs are to be either published on a company website or a copy of the plan is provided to any person who asks for it. ASBG members have serious issues with this requirement based on the following:

- *Security issues* – exposing storage details of chemicals, explosives, drugs and other security sensitive materials is considered dangerous and probably contravenes security policy. Such sensitivity would also extend to risk assessments of incidents as they would need to identify chemical storages and their location. Issues of concern raised by members include:
 - Location of storages of valuable chemicals such as pharmaceuticals, flammable substances, toxic substances is an invitation to terrorism, theft, sabotage or vandalism.
 - Location of drains, doors, fire alarms, safety equipment and response equipment is also considered dangerous as this also assists and invites illegal entry to sites.
 - It will provide information to persons wishing to harm the site, company or other persons working at the site.
 - Internal publication of a PIRMP also contains security issues, such as reprisals from disgruntled employees.
- *Privacy issues* - Providing names of individuals both corporate neighbours and government agency officials would also contravene privacy and a security laws and policies. Members expressed concerns of publishing internal names and contact numbers that could be used for malice purposes. Even contact numbers alone tend to be a magnet for unsolicited sales calls.

Jamming up emergency numbers with non-emergency callers defeats its purpose. Having a public emergency number which is published is acceptable, but other internal emergency numbers should be kept confidential from the public so they can be used without interruption during an emergency.

ASBG considers it is more practical to list emergency management roles and contact detail for such roles. This would extend to other government departments potentially involved in a large scale incident. Listing of neighbours names and contact details is considered a laborious exercise in which a better outcome would be via other communication channels, such as discussed below or via letter box drops or working with the emergency response agencies.

- *Commercial in confidence issues* - Providing materials locations and amounts will raise many proprietary and commercial in confidence issues.

Such issues of security, privacy and commercial in confidence will also extend to other referenced plans if they are also to be required to be made publically available.

Overall only the potentially effected neighbours, and government agencies will benefit from knowledge of a site's PRIMP. So why is there a need to make such detailed and sensitive information globally accessible?

Even publishing a partial PIRMP by removing sections that contravene security, commercial in confidence or privacy policy or laws, would result in a much smaller separate document. Defining the contents of a useful document, of which there are examples for MHF facilities, for public access would make far more sense than the publication of a complex and detailed full PIRMP.

ASBG considers a better approach is to provide a one page overview on emergency incidents for affected neighbours. Its brevity will be better understood and hence better acted upon by the local community if such an incident did occur. Such a one page sheet is consistent with the many information sheets which are prepared by the EPA for public consumption. As an example the 'one page' could include:

1. Potential incidents including: explosions, fire, atmospheric release and chemical/pollutant spill
2. Effects of (1) above on, people, property and the environment
3. Information on each of (1) above on what to do in an emergency
4. How the community will be advised of such incidents

ASBG recommends that publically accessible information on Pollution Incident Response Management Plans (PIRMPs) be condensed to a brief easy to understand one page document containing meaningful response information to potentially affected neighbours.

ASBG also considers that a site's full PIRMP should be limited in its accessible to the appropriate emergency response personnel only, both internally and externally. Access to part of the PIRMP would be made available only to appropriate internal persons dependent on their role in response. Overall, access to a site's PIRMP in full or in part should be under the control of the site implementing the plan.

3. SCOPE AND SCALE

ASBG notes that under the draft, PIRMPs can call up other emergency plans, which is a welcomed efficiency. The scope and scale of incidents covered under PIRMPs is assisted by the ability to call up other exiting plans. Incidents where external agencies, e.g. the Fire Brigades, take over control of the site, are already well established by many holders of EPLs. Large incidents, requiring outside control by government agencies are already well covered under other emergency plan obligations, such as required under [NSW Workplace Health and Safety Regulation 2011](#). As a consequence, the PIRMP for larger EPL sites will be part of a mosaic of emergency plans which must overlap and complement each other.

It is important to note that as a result of the transference of the control of a site, the role of the site occupier becomes advisory. Once control of the site transfers the generation of further pollution becomes the responsibility of the controlling agency.

As a consequence, the main PIRMP documentation compliant with the list provided in the draft will tend to deal with internally manageable incidents where the site has control over the management and operation of such incidents. Larger scale incidents will tend to be incorporated under a PIRMP as a reference to another plan.

ASBG considers the EPA should be mindful of this outcome when developing guidelines as flagged at EPA's public information session. .

While pollution and health issues will still need to be included in plans where a controlling agency has control, these will be more advisory including:

- The management of information and actions in the lead up to the arrival of the government agency which takes control of the site.
- Ongoing advice to the controlling agency once it takes over control of the site.

4. CLARIFICATION ON THE TESTING OF PIRMPs

Testing of the plans needs to be made reasonable, flexible and practical, but in the current draft form it is too broad and lacking in detail. Clarification is necessary, not only to communicate what testing should cover, but also to provide clarification to other government agencies on what is reasonable, flexible and practicable testing.

Guidelines containing minimum levels of testing were flagged during the EPA's public information session for development. Further information on minimum testing levels will also be necessary to indicate to the courts what the regulator considers is a minimum level. Considering a full tier 2 penalty applies to this currently conceptual new section under the POEO Act, such guidelines are a necessity.

Again ASBG considers splitting the requirements for testing into two areas of action:

- Internally managed incident response
- Externally managed incident response

Incidents which can be handled largely internally can be tested on a 12 month basis. However, for MHF sites and other large sites, to fully test such plans would require the cooperation of numerous government agencies, which may prove highly costly to all parties on an annual basis. Testing of MHF large scale incidents, should be part of the emergency response plans required under other legislation, and where the PIRMP refers to it.

Testing of PIRMPs should include reasonably simulated practical tests such as simulating the involvement of external parties if required or for example the release of a toxic gas cloud. Given the scale of larger incidents and the number of parties involved, a partial desk top test of the plan would be more practical. (e.g. evacuating a suburb to undertake a full test would not be practical or popular). The tests simulations be based on a range of scenarios identified by a risk assessment process undertaken in the preparation and review of PIRMPs.

ASBG recommends the EPA develop minimum level testing guidelines for PIRMPs, permitting the use of desktop and simulated testing processes.

Development of such guidelines should be subject to further consultation with EPL holders and related stakeholders.

5. OTHER ISSUES

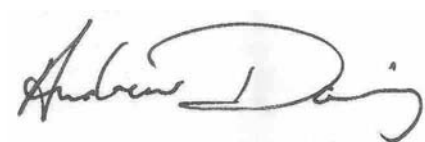
- 1) Sections (j) and (o) appear to overlap and are not clear in their intent. Given that (j) has a focus on the mechanism rather than the concept, this would be the more effective section to include. ASBG is not clear what the term 'early warnings' means. If this means effective communications with neighbours on possible scenarios, then our comments in section 1 would be considered sufficient.
- 2) Section (h) 24 hour contact details, are inconsistent with emergency contact detail required under many Environment Protection Licences, which are generally aligned to the operational hours of the

site. Contact availability should be reflective of the site's risks and operational arrangements and as required under each site's EPL.

- 3) Section (k) The NSW Government should clarify how contradictory advice from contacted and involved government agencies will be handled. Generally for a major incident the Fire Brigades has control, but for smaller incidents a hierarchy of advice from other government agencies is needed to avoid confusion. Once clarified, coordinated responses with government agencies can be best incorporated into the site's PIRMP.
- 4) The need to review the PIRMP within one month after an incident is miss-focused. The review should be on the procedure for that type of incident rather than the entire plan.

Should you require ASBG to clarify or elaborate on the above matter please contact me.

Yours Sincerely



Andrew Doig
National Director

Australian Sustainable Business Group (ASBG)

T. +61 2 9453 3348

F: +61 2 9383 8916

(PO Box 326, Willoughby NSW 2068)

Email address:

andrew@asbg.net.au

www.asbg.net.au