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Dear Lynne

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to further comment on the *Proposed Risk Based Environmental Regulatory Framework*, which includes:

- [draft Protection of the Environment Operations \(General\) Amendment \(Licensing Fees\) Regulation 2013](#)
- [Regulatory Impact Statement](#)
- [draft Environmental Management Calculation Protocol](#)

This submission was prepared with the assistance of ASBG's Policy Reference Group and ASBG's members.

Should you require further information, clarification or details on the submission please contact me on 02 9453 3348.

Yours Sincerely



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AUSTRALIAN SUSTAINABLE BUSINESS GROUP'S

Submission on

**Proposed Risk Based Environmental Regulatory
Framework**

November 2013



Sydney, Brisbane

EXECUTIVE SUMMARY

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to further comment on the Proposed Risk Based Environmental Regulatory Framework. This submission expands from our first submission [on the EPA's Risk Based Licensing Framework](#).

ASBG has a number of key issues with the package and proposed additions including:

- **The Administrative fee Multiplier Approach** — ASBG considers this is poor policy and should be replaced by an **additive fee** structure rather than the multiplier approach in which the penalties are proportional to the size of the administration fee rather than the compliance issue. A replacement additive fee structure is presented.
- **The Risk Assessment Tool and risk ranking** — This tool generates an overall hazard ranking which in combination with the environmental performance assessment makes the overall risk ranking for an EPL site. Use of 3 levels of risk ranking is considered too few. However, combining the six levels of administrative fees, based on the scale of operations at each site can make a reasonable matrix for better risk ranking. This can permit even larger sites to move between ranks if the right balance between the Risk Tool and the Environmental Performance is established.
- **EPA behaviour based on the risk ranking** — ASBG proposes additional parts to the Risk Based Framework which includes transparency and certainty on what the EPA will do in relation to inspections and EPL conditions based on the sites overall risk rank. A simple set of rules are provided to establish inspection frequency, reduction in monitoring costs (or other condition costs) based on good performance from the site. Included in this process is clarification of Pollution Reduction Programs as they will have increased use and implications. Such a change will provide more efficient use of EPA resources while providing improved rewards for good performers in NSW.

ASBG has also included in this submission a set of alternative systems to:

- Replace the Administrative fee Multiplier Approach with an additive approach
- Include a Risk Based Framework Changes To, Inspections, Monitoring and PRP Use

ASBG also made specific recommendations including:

- Publishing the impact of the Risk Based Framework on administrative fees by publishing the revenue collected with the Framework and the estimated revenue collected without the Framework.
- Publishing a protocol for the use of EPA required Pollution Reduction Programs, to again provide further clarity and certainty to the process.

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1 INTRODUCTION

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to further comment on the *Proposed Risk Based Environmental Regulatory Framework which includes:*

- [Draft Protection of the Environment Operations \(General\) Amendment \(Licensing Fees\) Regulation 2013](#)
- [Regulatory Impact Statement](#)
- [Draft Environmental Management Calculation Protocol](#)

The [Australian Sustainable Business Group](#) (ASBG) is a leading environment and energy business 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 130 members comprising of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

ASBG strives to assist regulatory agencies to prepare more efficient regulatory process, with the outcome of achieving practical, efficient, low cost solutions to achieve high environmental outcomes. This is achieved by feedback from members, mostly senior environment managers, who must implement the new controls in a cost effective and pragmatic manner where possible.

The EPA's approach has been to loosely base its Risk Based Framework on the United Kingdom's Environmental Agency's Operational Risk Appraisal (OPRA) system. This is where the administrative fee multiplier and the maximum of 3 was apparently taken from. However, members report considerable differences between the EPA's approach and the EA's OPRA, especially on the weightings given to poor performance. OPRA appears to treat non-conformances far lighter than under the EPA's proposal.

ASBG has a number of key issues with the Risk Based Framework package including:

- The Administrative fee Multiplier Approach
- The Risk Assessment Tool
- EPA behaviour based on the risk ranking

ASBG has also included in this submission a set of alternative systems to:

- Replace the Administrative fee Multiplier Approach with an additive approach
- Include a Risk Based Framework Changes To, Inspections, Monitoring and PRP Use

ASBG asked for a risk based approach to EPLs in its [Submission on Review of Licensing in NSW](#) to the Independent Pricing and Regulatory Tribunal. In this submission ASBG asked for a publically available and calculable risk index approach be adopted by the EPA for EPLs to establish:

- The environmental risks posed for that activity based on scale and type

- Which regulator should oversee this licence type (e.g. EPA or Local Government)
- The local environmental risks the activity poses taking into account its scale and the local environment in which it is located
- Will set the monitoring regime for the site, including types of monitoring, frequencies and percentiles
- Will set the inspection frequency for the site
- The amount of add-ons to EPL requirements

The proposed Risk Based Framework provided by the EPA only meets some of the above points and then only in part. Critically what is missing is the certainty and transparency on what the EPA's behavior will be based on the risk ranking of an EPL site.

The EPA has not ruled out the development of protocols and even indicated they have an internal risk approach. Members are keen to see what and how the EPA will react on risk rankings particularly on monitoring, inspection frequency and other impacts on EPL conditions. So to assist, ASBG has taken the step in developing proposed frameworks on how we consider this area could be addressed.

An additional proposal is ASBG's Administrative Fee Additive Scheme, which is provided as an alternative to the EPA Administrative Fee Multiplier approach. Member have considerable issue with the multiplier scheme and consider an additive approach would be much fairer.

Importantly, ASBG also supports the EPA's position of keeping the administrative fees schemes revenue neutral. But to improve the business competitiveness of NSW ASBG also proposes to rework the EPL conditions of good performing sites with the aim of saving costs.

2 ASBG'S GENERAL POSITION

Overall the draft Risk Based Framework appears more of a punitive system for poor performers, rather one of rewarding good performers. Its approach differs from other Australian states which have introduced similar systems that have offer more rewards in terms of licence fee reductions or simpler and more cost effective licence structures. For example:

- Queensland, in its recent Green tape reduction program, introduced¹ three discounts which can be used to obtain a cumulative total of 50% off the annual fee for Environmentally Relevant Activities:
 - 20% - Emissions score that is lower than that used to calculate the score for the activity;
 - 10% - Partners of the EHP ecoBiz program;
 - 20% - Environmental Management System (EMS) accredited to the international standard under ASNZ ISO: 14001: 2004 EMS.
- Victorian EPA has Licensed Operator Risk Assessment (LORA) model. This rates licensed sites into six categories. Linked to the rank is the frequency of inspections. Additionally the Vic EPA has linked industry sectors in intent and consistency and permits the site to develop its monitoring program with Vic EPA oversight. Monitoring plans are auditable documents that must be retained on the licensed premises for seven years. Good performing licensed sites are generally permitted to develop their own monitoring program to demonstrate environmental compliance under Victorian environmental laws.

In contrast, the Risk Based Framework offers at best a 5% administrative fee reduction and no concrete change in the way in which Environment Protection Licences (EPL) conditions are beneficially changed. The overall risk ranking's impact on EPL conditions was only mentioned in the Environmental Management Calculation Protocol Consultation draft, and states:

The risk assessments will inform the level and type of EPA regulatory intervention required; for example, a higher risk level may result in more intensive monitoring and reporting obligations on the licence.

If anything this indicates that tighter conditions will be imposed on poorer performers, and implies that business as usual will continue for the rest. ASBG also finds it surprising the NSW Government is supporting a scheme which increases the level of red-tape rather than reducing it. With additional, and for large sites, disproportionately large financial penalties associated with non-conformance on top of legislative and court set penalties, makes NSW a rather uninviting place for many industries. ASBG is disappointed with this approach as other states have made efforts to reward good performing licensed sites with lower costs, either directly or indirectly via more efficient licence conditions.

Due to these additional financial penalties, industry in NSW will need to invest even more resources to ensue even minor non-compliances are avoided. Even technical issues, such as, where the inspector not happy with the systems or controls in place to prevent or minimise the likelihood of a pollution incident

¹ See [Summary of fees for environmentally relevant activities](#)

can become a financial penalty. Inspector discretion, under this scheme, becomes a more significant issue as members are already concerned over already substantial differences between individual inspectors. For the Risk Based Framework to avoid potential conflict with EPL holders, a far more consistent transparent and predictable behaviour from the EPA inspectors will be required. ASBG believes the EPA needs to better manage the variations between inspectors and sectors within the EPA. ASBG's proposed changes to the Risk Based Framework (in section 4) goes part way in establishing a more consistent, transparent and equitably management of EPL enforcement and condition setting.

This submission will provide an additional mechanism to reward EPL holders and assist the EPA use of inspectorial resources to operate more efficiently.

3 THE ADMINISTRATIVE FEE MULTIPLIER APPROACH

Members have expressed concerned over the *Environmental Management Performance Fee Multiplier*. Briefly the use of a multiplier on administrative fees is poor policy. Environment Protection Licence Administrative fees vary from under \$600 to over \$300,000 p.a. Hence, under the multiplier system, the same non-conformance on two licence holders at the extreme ends of fee scale, can

RI ASBG recommends the multiplier approach to be replaced by an additive method which reflects the resources the EPA will commit to assisting the poor performing license holder over the next year. ASBG's proposed additive approach is provided in section 3.5 of this submission.

A proposed example of an additive fee system based on performance is provided in section 3.5. Amounts placed in this example are guestimates as ASBG lacks the data set to establish values, which should generate a relative revenue neutral balance. However, it does provide a basis for the design of an additive system.

3.1 Examples of the fee multiplier and Issues

To illustrate the issues with the fee multiplier system a few examples are used to show its impact on large and small licence holders.

Example 1: a site with a \$1,000 administrative fee may receive a Penalty Infringement Notices (PIN) (fine \$1,500) and have to pay \$1,900 next year, but a site with a \$50,000 administrative fee would in the same circumstance pay \$95,000.

ASBG's concern: EPA will need to justify that its increased oversight of the second EPL holder will cost \$44,100 more than the first.

Example 2 Site A with a \$2,000 administrative and site B with a \$80,000 administrative fee both receive three PINs within a year. Site A will have to pay \$6,000 next year, Site B will have to pay \$240,000 in the next license year in administrative fees.

ASBG's concern: A total penalty of \$4,500 in PIN notices equate, in both cases, disproportional penalties more than the PIN fines allocated to consolidated revenue. The \$160,000 increase in site B administrative fees is considered a massively disproportionate penalty and one financially equivalent of a large Enforceable Undertaking or a Tier 2 prosecution for a significant environmental offence. And yet the PINs are infringement notices, an environmental speeding ticket, so to speak. As a consequence, Members warn of increased court battles over PINs and other non-compliance issues represented under the fee multiplier scheme.

It also raises the question will Site A receive \$160,000 worth of EPA's resources to properly identify the real source? As the Administrative fee multiplier scheme is to be revenue neutral, hence it was not covered under the Regulatory Impact Statement, it is unlikely that any increased inspectorial resources are available given no increase in revenue. The best which can be expected is for a diversion of

resources away from other EPL sites onto the poorer performing sites. However, allocating resources proportional to the increased fee is considered a highly inefficient use of EPA resources. Again we come back to the poor policy of the Administrative fee multiplier approach, preferring one which supports a fee additive scheme instead.

3.2 Risk Based Framework to be Revenue Neutral

It is understood that the EPA intends to make the Risk Based Framework fee become revenue neutral. It is also understood that the EPA's licence administration arm is to be funded by EPL administrative fees, of which this fee revenue has been ring fenced for this purpose. ASBG has no opposition to this approach, and supports a revenue neutral outcome. To ensure the EPL administrative fees remain reasonable revenue neutral they should be publically available and at least published in the EPA's annual report and budget papers.

R2 ASBG recommends that the total administrative fees collected is published along with the total administrative fees that would apply if the Risk Based Framework was not used, so to identify the financial impact of the Risk Based Framework.

It is not the intent to strictly apply a neutral position, but one where +- 10% variation is considered reasonable. If the revenue is becoming too far from the allowable variation, adjustments to the fee rates under the Risk Based Framework would then need to be considered.

3.3 Offset of Administrative Fees with LBL

ASBG welcomes that for companies paying large Load Based Licensing (LBL) fees will continue to be able to off-set the administrative fees as the current legislative arrangements provide. Some members pay well over \$1 million dollars in LBL fees annually and would have been adversely financially affected if the administrative fees were an additional fee component.

As most EPLs cover manufacturing industry, this sector is facing one of the largest downturns, perhaps larger than that experienced post the 1987 stock market crash. So this part of the Risk Based Framework is a recognised in supporting the "*Plan to Make NSW Number One*".²

3.4 The Weighting scores applied to EPL holder compliance

Members have expressed concern over the weightings provided in the Risk Based Framework's [Environmental Management Calculation Protocol Consultation draft](#). These concerns include:

- The scale of negative points is considered heavy handed with a few relatively minor non-conformances resulting in substantial fee increases.
- The maximum 5% savings in administrative fees is small compared to other jurisdictions

² Main slogan of the NSW 2021 A Plan to Make NSW Number One

- The fee multiplier results in disproportional additional fee penalties applied in addition to other court and cost recovery (e.g. clean up notices) provisions contained within NSW environmental law for EPLs with even mid level administrative fee amounts.
- The positive points awarded for holding an EMS under ISO 14001 is considered to trivialise this program and the expense and effort companies put in to this practice. Preparation of EMS is a practice in the past the EPA has encouraged, but now it is valued as the same as a formal warning and one third of PIN and may serve to detract from such practices.
- Having the fee penalties reaching back 3 years in a 50% then a 10% impact in year 2 and 3 respectively are considered overly heavy in their weighting, especially for year 2.
- The timing issues of what constitutes good and poor behaviour under the administrative fee scheme need to be balanced with the rewards for good behaviour. Poor performance is cumulative, but good performance is not, which is considered unfair. Both should be cumulative or not. ASBG's proposed alternative to the administrative fee multiplier scheme and ASBG proposed inspection and EPL monitoring and conditions scheme are both left non-cumulated. This is described in sections 3.5, 5.2.2 and 5.2.3.

Overall the above issues lead ASBG to conclude the fee multiplier system is unfair and should be replaced by an additive scheme, such as the one ASBG proposes below.

3.5 Additive Approach Based On Performance – ASBG Proposal

An additive approach is preferred as it reflects the reallocated administrative work load the EPA would engage in to assist the EPL holder to rectify their issues. An hourly rate is used based on the hourly rates identified under the [RIS on the Contaminated Land Management Regulation](#) released in June 2013. Note the hourly rate is used as a means to identify the cost of rectification and the potential movement of EPA resources for this purpose. It is the starting point of this costing exercise.

The proposed additive approach simply adds negative issues imposed together for EPL year based on the Annual Return date limited by a capped increased rate. The cap is included as members are concerned that this can snowball with one non-compliance leading to another penalty mechanism. For example, a PIN may incur a reactive Pollution Reduction Program (PRP) and perhaps a formal warning. Hence, a cap is considered in order. Likewise the cap is also placed on the rewards (administrative fee reductions), which can be achieved, to ensure a better balance is set between revenue neutrality and the allocation of positive and negative changes to base administrative fee levels.

The *Environmental Management Performance Fee Additive Process* works by the following steps:

1. Environmental Performance is measured over the last year.
2. A list of performance criteria is used to add positive and negative performances – see Table 1 and Table 5
3. The sum of which is added to the licence administrative fee for the next licence year starting from the licence period date.
4. In the next licence year anniversary date the additive process is reset to zero and reassessed for the next year.

Table 1 Environmental Performance – Impact on Administrative Fees

Environmental Performance Impact on EPL Administrative Fees			
Parameter	Fee change#	EPA hours max+	Notes
EMS – table5	-\$4,000 max* (or 15%* reduction – lesser applies)	-4 to -100 hrs	Having an EMS or part of should reduce the time the EPA allocates to the site, saving resources. Note this amount is further split into sub EMS components as per table 5.
Compliance Monitoring breach – recorded over the concentration limit – not ‘technical’ breaches	\$260	4	ASBG further expands on the inspection rates allocated to EPL sites with various levels of risk ranking and performance in table 3
Formal Warning	\$260	4	
Official Caution	\$540	8	
Legal Notices	\$780	12	Clean up and Prevention notices
Mandatory Audit	\$910	14	
PRPs reactive	\$910	14	Reactive PRPs means those which are not initiated by the EPL holder and are triggered as a requirement under the recommended PRP protocol see s4.2.4
PINs	\$1,040	16	
Enforceable Undertakings	\$3,330	50	
Prosecution	\$5,000	75	

ASBG does not have the data to set the balance for EPL Administrative fees to become revenue neutral and provides the fee reduction amount as a guesstimate.

+ This is based on the estimated additional extra time the EPA needs to put in for those sites.

The hourly rate used is \$65/t. This may sound low but was picked up from the RIS on Contaminated Land which went out in June.

* The fee discount is calculated in proportional to the %tage in table 5 with the maximum rate for an EMS from table 3 is 15% this becomes a multiplier of 15/15 = 1, while a score of 2% would use a multiplier of 2/15 = 0.133.

Note these are **maximum** additional fees which can be applied to any EPL site.

They are also additive, e.g. so having 5 PINs may bring an increase of \$2500 max on the EPL admin fee, but should be capped at a maximum of \$10,000 reflecting the capping of the discount.

Table 2: The Contaminated Land Management RIS 2013 hourly rate table is shown below:

EPA staff hourly rate \$/hr From CLM RIS				
Officer	Section Head	Manager	Director	Legal
50	65	85	105	70

4 THE RISK ASSESSMENT TOOL

This section deals with the Risk Assessment Tool and how it will be used in the overall risk rankings for sites holding EPLs.

4.1 Use of the Numbered Rank System

ASBG welcomes the use of risk rankings in the terms 1, 2 and 3 rather than originally proposed as low, medium and high. Publishing the ranks was of concern as it may unnecessarily upset local residents who may not understand the meaning of the risk ranks. Moving to a numbered rank should diminish this issue, but not remove it. If community concerns arise following the publication of the risk ranks the EPA should consider preparing a public document to put the risk ranks in perspective and in context.

4.2 Potential Need for More Risk Levels

ASBG was shown the Risk Assessment Tool at one of the EPA briefings. The Tool is not technically a risk assessment tool as it does not consider the severity of the outcomes, but focuses on the hazards each site represents and how well the EPA considers they are controlled. To avoid confusion among risk professionals, an alternative name may be in order, such as Environmental Hazard Assessment Tool.

ASBG believes the reasons for the use of a hazard based rather than a risk based approach include:

- A simpler assessment process which focuses on quality of control measures
- Provides an outcome where the size and scale of the risks are not considered

ASBG has some concerns over the use of a full risk assessment as many larger and more complex sites would be trapped in a high risk category simply due to the scale of operations. Additionally, the scale of the site is already taken into consideration by the scale of the Administration fee charges. The Administration fee is an indirect measure of the scale of the environmental risks a site poses.

Originally administrative fees were established within the *Protection of the Environment Operations (General) Regulation 1998*, but were undertaken, at the time, by an internal process. The only guide on how administrative fees were set appear under the *EPA's Environmental Economic Series Load Based Licensing Scheme Draft Operational Plan (May 1996)* in which section 6.1.1 Administrative fees states:

There will be six levels of administrative fee, reflecting the EPA resources required to regulate each type of licence holder, including the cost of preparing licences, inspections, compliance auditing, developing guidelines and enforcing licence conditions.

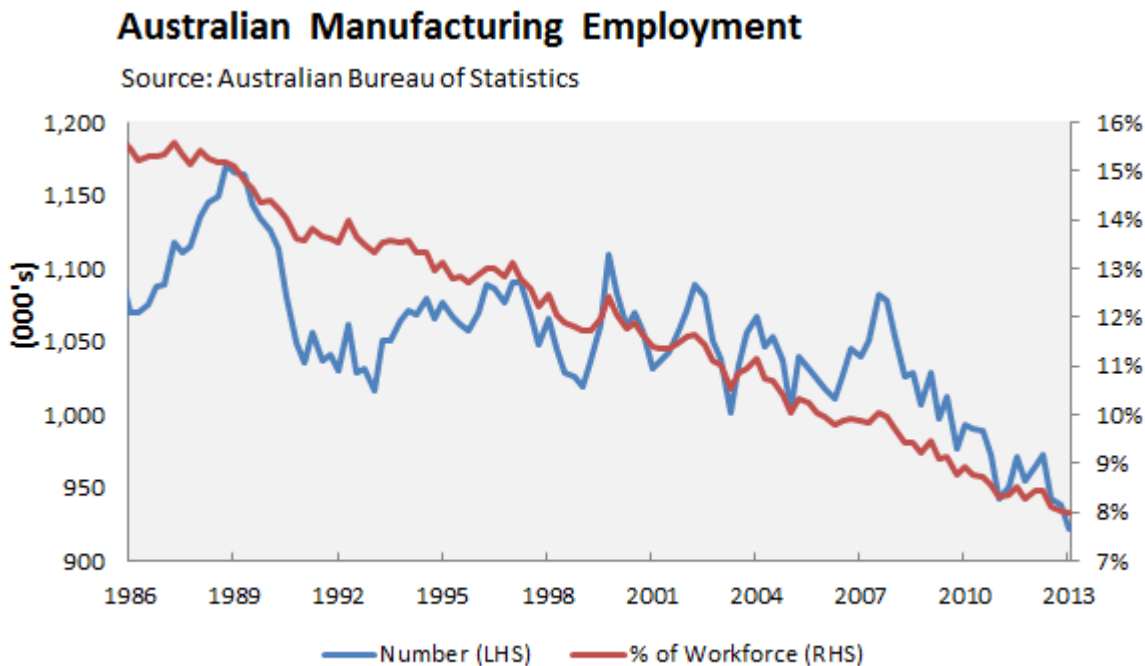
The Operational Plan then referred to Appendix 6 which is a table that lists the POEO Act's Schedule 1 activities and the six levels according to the quantity of product or material processed. These levels vary according to each industry sector under Schedule 1. ASBG concludes that a risk based approach based

on scale alone was used to establish these six levels, but have not been made public. Coincidentally, six levels are what the Victorian EPA uses to rank its licence holders.

ASBG, in its last submission on the Risk Based Framework, stated that more levels are required to permit more movement between risk levels for all licence holders. It is accepted that a risk based model can have difficulties in achieving this as many larger sites can be stuck permanently at the higher risk end. ASBG still considers that a larger span of risk ranks are required to permit the larger sites the ability and incentives to move between ranks due to improved performance, but an alternative matrix is provided as an interim measure to see if this is effective. This is used by ASBG in its proposed changes in section 5.

5 EPA BEHAVIOUR BASED ON THE RISK RANKING

NSW manufacturing represents 28.5% of all of Australia’s total manufacturing employment, employing 272,000 in May 2012³. From 1992, to May 2012 manufacturing has lost 106,775 jobs across Australia, with NSW. This is represented by the figure below Manufacturing Employment which indicates the trend is continuing if not recently accelerating downwards.



From the EPA’s Public Register, ASBG estimates over 55% of all licenses can be classified as manufacturing. The vast bulk of licence fees paid— administratively and from Load Based Licensing— are in the area of manufacturing and utilities. To assist in sustaining manufacturing the NSW Government as per its own NSW 2021 Plan, should be looking ways to reduce costs on EPL holders.

Overall ASBG calls on the NSW Government and the EPA to consider more efficient ways to reduce the cost impacts associated with sites holding EPLs. While the administrative fees are set to be revenue neutral, they are falling behind other states in the cost streamlining of environmental licenses.

ASBG, in this section, explores a means in which the Risk Based Framework can be used to:

- Improve the efficiency of the EPA’s licence administration
- Provide more costs savings for EPL holders who are assessed as being good performers without reducing the licence fee revenue available to the EPA

Both these points are discussed in the following sections including an alternative approach that provides a set of incentives to EPL holders who are good performers and how they can be rewarded.

³ Source: ABS Cat. No. 6291.0.55.003

5.1 Use of Risk Based Approach to Improve EPA Resources Efficiently

Apart from showing licence holders how the regulator considers their performance level, a risk based approach can also be used to enable the regulator to establish more efficient means of allocation of its resources. A risk ranking of sufficient sensitivity can be used to target the poorer performers with increased surveillance and controls. At the other end of the scale, good performers can be rewarded with fewer inspections and be permitted increased self regulation.

ASBG believes the EPA will benefit from the opportunity that the Risk Based Framework presents to enter into more efficient and consistent management practices based on the outcomes of the risk assessments. Licence holders will also benefit by improved certainty that contain benefits of more cost effective EPL conditions, provided by a transparent and consistent process on how such an approach can operate. ASBG notes there are a few issues with current licence conditions that are set on a one-on-one basis, which has led to imbalances of conditions between EPL holders within the same or similar industry sectors (see s5.1.1).

In the next section ASBG looks at a simple approach by combining the administrative fees with the risk ranking to generate an overall set of rewards proportional to their good behaviour. ASBG recognises that there are more thorough ways in approaching this issue, such as going back to the drawing board and re-setting all the *POEO (General) Regulation 2009's* administrative fees based on a risk assessment approach.

5.1.1 Tying Risk Ranking with EPL Conditions

There is another issue which presents its self in the path towards a real risk based approach to licensing. That is the historic approach to setting licence conditions. The current licence conditions are set by a negotiation process where the EPL holder can, if needed, challenge new conditions the EPA proposes in court. The negotiatiton approach assumes the licence holder will be vigilant and vigorous in negotiation. However, there are many cases where this is not the case. Fear of reprisals, real or not, by the EPA, Government agencies, competitors and the local community tend to make many licence holders sheepish in such negotiations. Other factors also come into play, such as expertise. With the downtrend in manufacturing, proper internal environmental expertise can be lacking, resulting in a poor negotiation processes and outcomes. In general the EPA tends to have the upper hand in the licence negotiation processes. Some examples based on real licences include:

- 1) *Company A has a very active EPA inspector, who over the years have increased the licence conditions considerably with little opposition from the company. Company A is in the chemical manufacturing sector and largely supplies product under a Government Contract, and passes the costs on. Its licence now contains 64 monitoring points, one of the largest sets for all except a few of the largest sites in NSW. yet its manufactured output is about 5,000 tonnes per annum. To put this in context another chemical manufacturer making similar category of products, but at over 100,000 tonnes per annum has only 18 monitoring points around its site.*

- 2) *Company B is involved with a complex negotiation with the EPA over its water discharges. Just before the company's environmental manager changed jobs and moved. Management, not knowing the details agreed to all the EPA's position including continuous monitoring with 100%tile conformance levels. This is very costly process where monthly samples are replaced by a continuous monitoring system that measures say suspended solids every 10 seconds. Such equipment represents over \$150,000 in capital expense and \$40,000 in running costs p.a. Company B's NSW competitors do not have the same level of costly monitoring putting them at a commercial disadvantage.*

The issue with the current conditions setting process is it's adversarial and subject to the personalities of the individual inspectors. Such wide variance in the monitoring conditions in the above point to a poor and *ad hoc* process of setting licence conditions, especially on monitoring.

5.1.2 Use of Risks To Set Regulator Behaviour

In the mid 1990s Sydney Water's enforcement of its Trade Waste Agreements were also identified as being quite variable, generally linked to the inspector rather than what Sydney Water management wished to achieve. For example, when inspectors changed, it was not uncommon for letters of commendation to be replaced by breach and non-conformances notices.

Sydney Water corrected this variation in its policing by the introduction of a Risk Index. A formula is used to set a risk for the site. This risk rank then sets, transparently and consistently the rate of inspections and monitoring. Not only did this make Sydney Water's approach more consistent, as some poor performers were getting away with lack of policing, but it make the allocation of Sydney Water's resources to the issue more efficient by systematically targeting sites based on risk rather than whims of the inspectors.

Sydney Water risk index is one where the EPA can learn from, even though a different system would be required.

5.1.3 EPA's Opportunity to Use Risk for Resource Allocation and reward Good EPL Holders

Under the proposed Risk Based Framework's *Environmental Management Calculation Protocol Consultation draft* offers the only explanation of what the EPA will do with an EPL's Risk Rank, quote:

The risk assessments will inform the level and type of EPA regulatory intervention required; for example, a higher risk level may result in more intensive monitoring and reporting obligations on the licence.

This simply appears as a business as usual approach, where no publically available process will be provided on what and how the EPA will behave in its approach to risk ranking. What is missing is the uptake of the opportunity to develop a transparent, publically available document that provides a level of certainty that is a calculable and or an ascertainable outcome on the impact of risk rank on EPL conditions for each EPL site.

ASBG also contends that as the proposed Risk Based Framework lack sufficient rewards for good performance. Further rewards are required to enable good performing EPL holders in NSW to compete with other jurisdictions increased flexibilities on licence conditions and fees.

5.1.4 Major Gaps in EPL Conditions for Sites of Similar Risk

The last issue is the differences in EPL conditions between similar sites of similar industry sectors. The first example provided in s5.1.1 is real and these licences can be pointed out. The Risk Based Framework, and even ASBG proposed approaches, go only part way to addressing some EPLs with that have considered excessive EPL conditions based on their environmental risks. While wishing to keep the ability to negotiate licence conditions, ASBG also considers more consistency between some licences is also required to correct the extreme examples of where the negotiation process did not work. This may boil down to basic EPL criteria being more based around industry sectors, but also retaining a reasonable level of site specific flexibility.

5.2 Proposed Risk Based Framework Changes To Inspections Monitoring, And PRP Use – ASBG’s Incentives

In combination with ASBG’s proposed Administrative Fee Additive Scheme provided in section 3.4 Additive Approach Based On Performance, below are the incentive components.

R3 *ASBG recommends the EPA adopt ASBG’s Proposed Risk Based Framework Changes To Inspections Monitoring, And PRP Use in this section.*

5.2.1 Background

At the Parramatta public consultation session the EPA recommended that ASBG provide a means in which the Risk Rank for and EPL site may vary the conditions in the licence and EPA enforcement behaviour. ASBG considers that a structured approach to the allocation of EPA resources in proportion to risk the EPL site presents should be included as part of the Risk Based Framework. Having a structured approach to the use of EPA resources, especially inspection frequency will result in a more efficient use of the agencies resources. It will also produce a more consistent and uniform use of the limited EPA resources, which is a more professional approach. Some sites that have been rarely inspected should receive more regular visits, while others that have been frequently inspected may be less inspected all of which will be proportional to the environmental risk that site presents.

As the Risk Based Tool does not take the scale of the facility into account, the administrative fee is used as a default representation of the scale of the level of potential pollution at the EPL site.

5.2.2 Inspectorial frequency

Setting inspectorial frequency to EPL sites is an important step in allocating appropriate EPA resource proportional to the scale of the risk it presents. Many small EPLs are infrequently visited by inspectors (e.g. less than once per 4 years), which may result in improper inspections and potential for pollution. While other sites are frequently visited, some over visited. Visitations should be based on risk.

Table 3 – Inspectorial frequency

Admin fee rank	Admin fee p.a.	Inspection frequency p.a.#		
		Risk Rank 1	Risk Rank 2	Risk Rank 3
1	\$500-\$3000	0.2+	0.25	0.33
2	\$3001-\$6000	0.25	0.33	0.4
3	\$6001- \$10,000	0.4	0.5	0.75
4	\$10,001 - \$25,000	0.75	1	1.5 or PRP*
5	\$25,001 - \$60,000	1	2	3 or PRP*
6	\$60,001 +	2	3	4+ or PRP*

* or other requirements, if PRPs are not appropriate

+ 0.2 rate = one inspection in five years

These inspection frequencies are based on member feedback and are guestimates. The frequencies should match the EPA's available resources.

The above frequency of inspection is based on feedback from members on the range of inspections currently performed by the EPA. This table should be adjusted according to the current EPA resources available which are not available to ASBG. So good performers will need less scrutiny from the EPA and permitted more self regulation. While poor performers will receive higher administrative fees and increased inspection rates and where appropriate correction actions such as the use of PRPs where appropriate.

5.2.3 Monitoring and Condition Costs

To provide some cost relief for EPL holder of good performance, a reduction in monitoring costs is considered a significant transfer to more self-regulation, but other EPL conditions can also be considered. The proposal is similar to the Vic EPA where low risk-ranked sites are permitted, under their licences to achieve environmental outcomes, rather than a focus on process orientated command and control conditions. Monitoring is a major cost to many EPL holders and a useful starting point to achieve what can be called a Low Cost Best Practice approach for good performers.

Monitoring cost reduction is considered a reasonable approach as it should permit the EPL holder to provide a lower cost monitoring regime, but one that also best meets the monitoring outcomes the existing EPL is to meet. If the monitoring cost reductions are not possible, changes to other EPL conditions should be considered with the aim of providing increased self regulation for those licence holders showing good performance and low risk.

As the scale of the facility increases the opportunities to reduce costs also increase. It is recognised that smaller sites will have simple licences and changes will not achieve the targeted cost reduction. Also the capping of the fee reductions means that larger sites do not have similar

proportion of reward in fee reduction as smaller sites do, but make it up by the opportunity to have more flexibility in EPL conditions.

Table 4 Impact of Risk Rank and EMS on Monitoring and Conditions Cost

Admin fee rank	Admin fee p.a.	Monitoring – cost reduction aim		
		Risk Rank 1	Risk Rank 2	Risk Rank 3
1	\$500-\$3000	20% + EMS*	0 + EMS	0
2	\$3001-\$6000	20% + EMS	0 + EMS	0
3	\$6001- \$10000	20% + EMS	0 +EMS	0
4	\$10,001 - \$25,000	20% + EMS	0 + EMS	0
5	\$25,001 - \$60,000	25% + EMS	5% + EMS.	0
6	\$60,001 +	25% + EMS	5% + EMS	0

* EMS score is an addition reduction in costs as per table 5

Note additional reporting will be attached / included in PRPs if applied to the EPL site.

The percentage cost reduction increases in the higher fee sites as these sites generally have far more monitoring points and complexity, leading to more opportunities to reduce costs for good performers.

Table 5 Environmental Management Actions and part System and Monitoring cost Reduction

Environmental Management Action	Reduction in Monitoring Cost
ISO 14001 or equivalent EMS	15% in total*
Assessment of Environmental Aspects	4% additive*
Preventative Maintenance	3% additive
Pollution Control Equipment Inspection/maintenance	2% additive
Site Audits conducted	2% additive
Environmental Improvement Plan	3% additive
Environmental Staff Training	1% additive

* In total means the maximum %ages available, whereas additive means you can add up these %ages together, but they do not score higher than 15%.

The percentage reduction in monitoring costs is guideline target in which alternative newer and lower cost monitoring approaches are to be considered. Obviously, monitoring linked to Load Based Licensing will not be included in this reduction as LBL monitoring has its own negotiable arrangement⁴. The aim is not to reduce the quality of the monitoring, but to reduce EPL costs or provide increased flexibility through alternative practices such as:

- Review of monitoring and other EPL conditions to achieve an outcome of meeting the environmental legislation rather than meeting a process.
- Where EPL holders share a common sampling point at property boundaries the monitoring costs and results can be shared between them.
- Continuous monitoring system to be reconsidered based on need, uptime, type of continuous monitoring, maintenance requirements and backup.
- Ambient air and water monitoring not linked to measuring only the site's emissions, but to average levels around the site or area to be reviewed.

⁴ Use of the Technical Review Panel is available for setting LBL measurement methods –part 2.2 POEO (General) Regulation 2009

- The number of sampling points to be reviewed where the history of those points provides a clear pattern of conformance.
- Use of internal EMS based and audited systems and controls to manage environmental conformance issues such as self generated monitoring programs and compliance practices.
- Replacement of sampling and analytical test methods with lower cost methods which achieve a similar level of performance indication. This may mean using an in-house method rather than Approved Methods for lower risk measurements. For additional scientific certainty the alternative method could be reviewed by the LBL Technical Panel.

Reduction of monitoring and EPL condition costs should also be considered based on the industry sector's practices. This will mean over a longer term discussing monitoring requirements and other EPL conditions with industry sectors to strive for a more consistent monitoring within that sector. This will mean some site may incur more monitoring and other less depending on their scale, industry sector and risk.

ASBG recognises the percentage reductions are only aims, and where these cost reductions cannot be achieved, then it is proposed that a Victorian approach be used where the EPL conditions are re-written to permit the EPL holder greater control over the conditions it must meet to achieve compliance. Some EPL holders may even increase the monitoring conditions to provide increased certainty regarding permitted contaminant levels.

5.2.4 Use of PRPs

Poor performing EPL sites will, if required, need additional conditions, but as the Risk Rank can vary each year, corrective short term conditions is considered appropriate method to deal with such issues. Use of PRPs are one suitable existing means to achieve this purpose. PRP conditions including monitoring, reporting and inspections, all of which can have set timeframes.

To provide transparency a publically available document is required to clarify how Pollutant Reduction Programs (PRPs) will be arranged on EPLs after a non-conformance / breach. Note this is not condoning an increase in PRPs, but more recognition that the PRP process uses *ad hoc* temporary conditions that can reflect breaches in proportion to their severity.

R4 ASBG recommends a publically available document—a PRP Protocol—be prepared with consultation that specifies the use design and content of Pollution Reduction Programs.

6 CONCLUSION

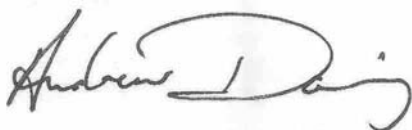
Adoption of an additive approach to administrative fees is considered a much fairer approach than the proposed fee multiplier scheme. An additive approach would treat all non-compliances in an equal manner and not one that increases in proportion to size of a site's EPL fees.

Introduction of a transparent scheme of how the EPA will treat EPL holders at various risk ranks and administration fee levels will provide certainty and incentives for good performing industry to continue to remain in NSW. For poor performers an increase in scrutiny and corrective actions such as PRPs are also outcomes along with increased fees.

Under this approach the use of EPA's resources to focus on the poorer performers and also establishing baseline inspection frequencies will provide better usage of EPA resources. A systematic rather than an ad hoc approach to inspections should also produce a better level of environmental protection for NSW and at a lower cost.

Should further information or explanation of the contents of this submission be required please contact Mr Andrew Doig on 02 9453 3348.

Yours Sincerely



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