

17 February 2012

Ms Lisa Corbyn
Chief Executive Officer
NSW Environment Protection Authority
PO Box A290
Sydney South
NSW 1232

**Re: Supplementary submission regarding the Protection of the Environment
Legislation Amendment Act 2011**

Dear Ms Corbyn

Further to our submission of 8 February 2012, I write to you concerning the *Protection of the Environment Legislation Amendment Act 2011 (Amendment Act)*.

In conjunction with the Australian Lot Feeders Association, we met with Minister Parker's adviser Ms Nicole Buskicwicz and with Acting Director Reform & Compliance, NSW EPA – Mr Greg Sheehy on 9 February. As a result of that meeting, we herein highlight further concerns regarding the *Amendment Act*.

Reilly report and commensurate risk

The Reilly Report, released on 30th September 2011 was 'a review into the serious pollution incident at Orica Australia Pty. Ltd. Ammonium nitrate plant at Walsh Point, Kooragang Island on August 8, 2011.' The report was specific to the Orica incident, was not undertaken in consultation with the agricultural sector, which was a serious omission, and made nine recommendations, the majority of which centre on the governments' response to a pollution incident. Recommendation 8 recommends the development of a 'precinct plan' specifically for Kooragang Island.

Given the specificity of the Reilly Report, it is incomprehensible that new pollution control mechanisms developed in the wake of the Orica incident are to be applied to the pig industry, which already has a set of environmental and incident response plans. The imposition of unnecessary and impractical pollution response plans developed for a large chemical manufacturing plant on the largely family-run small-scale pig industry is, frankly, massively onerous and illogical.

APL urgently seeks to have the regulations reflect the principle of proportionality, on the basis that regulations should be commensurate with the level of risk posed by respective industries.

Existing tools

The Australian pork industry is small-scale, operating to strict standards, presenting a very limited environmental threat. The industry already has a suite of measures available to monitor, control and respond to environmental threats arising from our operations.

The Industry has a comprehensive National Environmental Guidelines for Piggeries 2nd edition 2010 (revised) that was developed in conjunction with a number of EPA's including NSW Department of Primary Industries and NSW Department of Environment, Conservation and Water. The Guidelines provide a general framework for managing environmental issues that reflect on the over-arching environmental principles including; waste hierarchy, cleaner production and minimising impacts on land, water and the atmosphere. As regulatory requirements follow the general principles of environmental protection, the Guidelines provide advice to industry on how piggeries may achieve the outcomes required by regulations. The Guidelines contain detailed information on both planning and management, including; site selection, flood plain exclusions, fixed and variable buffer distances for complexes and reuse areas (roads, surface waters, residences, odour) effluent systems, composting, carcass management, chemical storage and handling, reuse requirements and comprehensive monitoring information including nutrient, soil and water quality testing.

The Guidelines also provide a Environmental risk matrix (also on-line) for piggeries to identify their risks and associated mitigation strategies. The risk assessment complements a detailed monitoring and assessment of sustainability section and environmental management plans. The EMP and associated template incorporates current licence requirements together with the identification of risks, minimisation strategies, monitoring and reporting and a listing of contingency plans or emergency strategies.

In addition to industry, local government also has comprehensive environmental planning requirements for intensive animal industries such as floodplain exclusions ie 1:100 year flood and waterway setbacks, and often include ongoing planning permit requirements such as waterway testing if a risk is identified.

Compared to other jurisdictions that don't require any EPA licensing (Victoria) or only for large farms (SA) for current requirements from NSW EPA, local government and industry more than adequately address the risks associated with pig farming. In many states such as QLD, Vic, SA, NSW and now WA the National Guidelines have been accepted and incorporated into planning and regulations and have replaced, complemented or been used to update state codes of practice or assessment requirements.

The new requirements under the *Amendment Act* clearly ignore the current tools in place that address environmental risks and instead introduce duplication - something which we believed government were attempting to reduce. We note that in Attachment two of the *Pollution incident response management plans: Proposed amendments under the POEO (General) Regulation 2009*, sent to producers on January 16 2012, that there is a provision to allow the proposed plan to reference other plans if they meet the requirements of the Act. Industry would welcome the acknowledgement of existing tools to address the risks.

Monitoring data

During discussions in the meeting of 9 February 2012, it was suggested that 14 day monitoring, or monthly at a minimum, would be the likely recommended sampling regime. APL asserts that this requirement would be a ridiculous imposition and outrageously onerous on small and medium scale producers, providing little or no benefit to the community or to the environment. Currently, data is published once a year, and submitted to the EPA. The data from a piggery does not often vary greatly, and the burden of recording this data is generally taken by the owners of the facility, often husband and wife operators.

The main tests undertaken by piggery operators are an annual soil sampling regime to demonstrate nutrients are being applied at sustainable rates, and effluent pond samples. Effluent is only generally spread during certain months of the year when there is a reduced risk of runoff and leaching. Changes in the soil nutrient profile also often takes years to show change due to microbiological and availability processes. Sampling every 14 days would include approximately 6 months of the year when no effluent is spread and very little change would be recorded. APL has to ask what the purpose of this requirement is - an unnecessary, costly, time consuming and ultimately pointless requirement. Effluent ponds also remain reasonably constant across the calendar, so again, APL must ask, what the benefit of sampling every 14 days or monthly would be to the community.

A current example of NSW EPA licence holder requirements is four soil samples and four effluent samples at a cost of approx \$1000 annually. **If the NSW EPA moves to impose sampling every 14 days that would be an impost of approx \$26,000 on a small producer.** If the producer owns multiple sites, which is often the case in order to separate the classes of pigs, this cost could potentially blow out to over \$50,000 a year. This doesn't include the cost of sampling time, or uploading and explaining this data to meet monitoring requirements.

The new requirement to publish monitoring data within 14 days of its collection is unlikely to be met by the majority of the pig industry. Unlike big corporations with their own labs or city based organisations, pig producers do not have ready access to a lab for testing. Soil samples have to be sent off to a lab and often take upwards of three weeks before results are returned. This lag time would mean a minimum of at least five weeks before data would be made public. The data collected from piggeries is entirely different to chemical manufacturers etc who are looking at picking up immediate pollution incidents. Piggery data is looking at long term sustainability trends i.e. nutrient build up. **The purpose and intent of the sampling between industries is entirely different and should not be treated the same.**

Currently the EPA are responsible for making publically available any monitoring data requested through FOI legislation. The *Amendment Act* shifts this responsibility to the licensee, who would in our industry be unlikely to have a publically available website due to the small/medium family operated business structure, as well as legitimate privacy, biosecurity and potential activist activity concerns. The issue of interpretation of these results is also of concern. Our producers are not skilled in environmental sciences and should not be expected to undertake interpretation of, and prepare written explanations for scientific results.

It must also be noted that the small businesses that need the most information and assistance during this process have been ignored by the NSW EPA. The information sessions run in Sydney and Newcastle are clearly for city based organisations, with not one session being conducted in a rural area.

A large chemical business like Orica has the human capacity to undertake this type of monitoring and publication on a fortnightly basis, and clearly there is a heightened need if the environmental and human health risk is significant due to the nature of their operation. In cases of significant risk like the Orica incident, there is a clear need for timelier reporting due to the potential impacts of their activities, and the associated commensurate risk. However, a small family-run pig farm that is low risk has adequate licence, industry and government tools in place to address the risks, is often in an isolated area (further reducing any threat to human health), and monitors for long term sustainability rather than immediate pollution incidents, does not require the same regulatory requirement imposts as a high risk chemical operation. Legislation should be

based on level of risk. The *Amendment Act's* blanket approach is in no way justifiable. This massive increase in cost and reporting burden, for no apparent benefit to the environment or community, is entirely unnecessary for a small-scale industry which poses limited environmental risk.

APL seeks the immediate revision of these requirements for our industry based on current standards which are fit for purpose.

Yours sincerely



Kathleen Plowman
General Manager, Policy

Cc: Robyn Parker - NSW Minister for the Environment
Katrina Hodgkinson - NSW Minister for Primary Industries
Greg Sheehy – A/Director Reform and Compliance, NSW EPA