



Regulatory Impact Statement

**Proposed Protection of the Environment
Operations (General) Amendment (Licensing Fees)
Regulation 2013**

Submissions

The Environment Protection Authority (EPA) welcomes written comments on the draft Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2013 and the draft Environmental Management Calculation Protocol.

Submissions should be sent to:

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The closing date for submissions is **1 November 2013**.

During this consultation period, this Regulatory Impact Statement is available on the EPA website at www.epa.nsw.gov.au/licensing/licencereg.html

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Summary

The NSW Environment Protection Authority (EPA) leads business and the community to improve their environmental performance and manage waste to maintain a healthy environment. As the State's principal environmental regulator, the EPA is responsible for regulating a diverse range of activities and monitoring compliance with legislation and statutory instruments covering air emissions, noise, waste, water quality, forestry, contaminated sites, dangerous goods, hazardous materials and pesticides.

The *Protection of the Environment Operations Act 1997* (POEO Act) establishes the environmental regulatory framework to protect the environment and the people of NSW. The activities listed in Schedule 1 of the POEO Act (broadly, activities that potentially have a significant environmental impact) require a licence. The POEO Act also establishes regulatory roles and responsibilities and the concept of appropriate regulatory authority (ARA). The EPA is the ARA for all licensed activities and a subset of low-risk activities that were previously licensed.

Under the POEO Act the EPA licences approximately 2500 facilities that are subject to licensing thresholds which reflect the type, size and complexity of activities within particular industry sectors. Industry types range from agricultural activities such as piggeries through to heavy industrial activities such as oil refineries and steel production.

A review of the POEO Act undertaken by the EPA has found that while the Act generally continues to meet its objectives, improvements to the licensing framework are required. In particular:

- A risk based licensing framework should be adopted to ensure that all licensees receive an appropriate level of regulation based on the level of risk they pose.
- Stronger incentives are required for industry to improve compliance and environmental performance.
- The EPA needs to be well equipped to regulate high-risk pollution facilities.
- The community should be provided with increased information about industry environmental performance and EPA regulatory decisions.

To address the above review findings the EPA is proposing to introduce a risk-based licensing scheme. Although many of the elements of the scheme can be introduced without the need for legislative change, amendments to the Protection of the Environment (Operations) Regulation 2009 (POEO General Regulation) are required so that a licensee's environmental management practices and performance are reflected in the calculation of licence administrative fees.

These amendments would result in poorer environmental performers being required to pay additional fees while there would be fee reductions for good environmental

performers, providing an incentive for licensees to improve their environmental performance.

In addition to amending fees to support the introduction of the risk-based licensing scheme, it is proposed to make amendments to the POEO General Regulation to:

- Provide a continuation of the annual indexed increases to licence administrative fees.
- Provide a continuation of the annual indexed increases to environment protection notice fees.
- Provide a continuation of the annual indexed increases to load-based licence fees.

These changes are to be made via the Protection of the Environment (General) Amendment (Licence Fees) Regulation 2013.

1. Introduction

This Regulatory Impact Statement (RIS) addresses a number of proposals to amend fees in the POEO General Regulation.

The POEO General Regulation gives effect to a number of provisions of the POEO Act. The key provisions relevant to these proposals relate to environment protection licence fees and fees for issuing environment protection notices.

The RIS assesses the economic, social and environmental costs and benefits of the proposed amendments contained in the Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2013 (the Amendment Regulation).

1.1. The purpose and content of the Regulatory Impact Statement

The purpose of the RIS is to outline the amendments to the POEO General Regulation, which are to be made via the Amendment Regulation. The amendments are being proposed to improve the operation of the environmental regulatory framework, and to ensure that the POEO General Regulation provides the greatest net benefit or least cost to the community compared with its alternatives.

The proposed amendments to the POEO General Regulation are:

- Change the way licence administrative fees are calculated to support the introduction of a risk-based licensing scheme so that poor environmental performers who require a higher level of regulation bear the cost of that regulation. This will provide an incentive to improve environmental performance and better equip the EPA to regulate poor performers.
- Provide a continuation of the annual indexed increases to licence administrative fees and fees for issuing environment protection notices to reflect increases to the cost of regulating.
- Provide a continuation of the annual indexed increases to load-based licence fees to ensure that load-based licensing fees remain relevant and the incentive to reduce emissions is maintained in real terms.

1.2 Consultation

The EPA has undertaken preliminary consultation with key stakeholders during the development of the risk-based licensing scheme and the Amendment Regulation. Initial targeted consultation was undertaken with key government agencies, key industry associations and businesses, local government and environment groups to inform the development of the proposals. The EPA has also established a licensee reference group to provide advice on the risk assessment tool that underpins the scheme.

The draft Amendment Regulation and the *Environmental management calculation protocol* (which will be used to determine environmental management categories as

part of calculating administrative fees) and the EPA risk assessment tool are available for public comment.

The EPA will also be holding information sessions on the proposals in Sydney and in NSW regional locations for licensees, state and local government and other interested parties.

A notice calling for submissions has been published in the *NSW Government Gazette*, the *Sydney Morning Herald* and *The Daily Telegraph*.

The EPA welcomes written submissions by 1 November 2013 and will carefully consider all matters raised before the Amendment Regulation is finalised.

2. Changes to the environmental regulatory framework

2.1 Introduction of a risk-based licensing framework

Following the findings of a review of the POEO Act the EPA is proposing to introduce a risk-based licensing scheme to ensure that all environment protection licensees receive an appropriate level of regulation based on the level of environmental risk they pose.

The proposed framework represents best practice and is consistent with the Council of Australian Governments (COAG) reform priorities including the National Compact on Regulatory and Competition Reform (COAG, 2012) agreed to by local government and business in December 2012. The Compact includes a commitment that regulators will adopt risk-based and best practice approaches.

The EPA is also working closely with other Australian environmental regulators as part of the COAG Standing Council on Environment and Water's seamless environmental regulation agenda, which includes examining approaches to harmonise risk based environmental regulation methodology and frameworks.

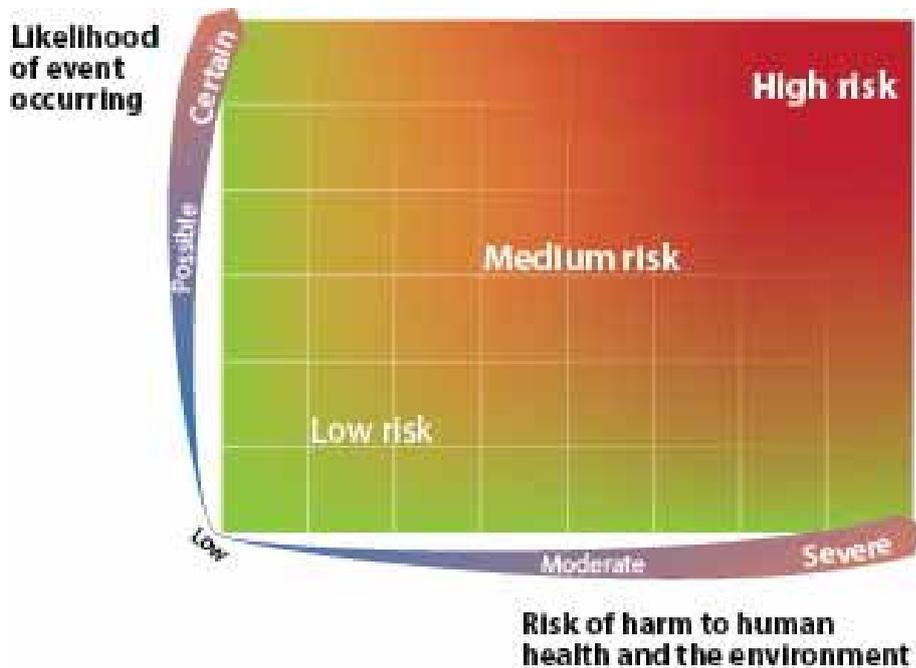
As part of developing the risk based licensing scheme, the EPA reviewed risk-based approaches being used by other Australian and international environmental regulators. The United Kingdom Environment Agency has implemented a regulatory framework that matches the level of regulatory intervention and licence fees with the level of environmental risk. A number of other Australian environmental regulators have implemented or are in the process of developing similar risk based frameworks.

The risk assessment process developed by NSW EPA will ensure that its regulatory actions are proportionate to the level of environmental risk posed by activities licensed under the POEO Act. The EPA's risk assessment process has been modeled on the Australian/New Zealand Risk Management Standard (AS/NZS ISO 3100, 2009).

An independent risk specialist has reviewed the proposed EPA risk assessment framework and found that it provides a sound risk-based approach that complies with the intent and general requirements of the Australian/New Zealand Risk Management Standard.

The EPA measures environmental risk in terms of likelihood of an event occurring and the risk of harm to human health and the environment (the consequence of an event).

Figure 2.1 The EPA's environmental risk matrix (EPA, 2013)



Under the proposed risk-based licensing framework the EPA will assess the site-specific risks posed by each licensed premises and identify environmental issues that a licensee needs to address and where the EPA needs to focus its regulatory attention.

As the assessments will be based on the environmental risks associated with a premises-based activity, the risk assessment process will not apply to licences issued for the transport of trackable waste.

The risk assessment will consider three components:

1. The day to day operations at the site, assessing the types of environmental media relevant to the premises (air, odour, water and noise emissions and waste).
2. The pollution incident risk at the premises.
3. The environmental management performance of the licensee.

During the assessment of the first two components, the EPA will take into account:

- the type and nature of emissions from the premises
- pollution control measures used at the premises
- proximity to sensitive environments and receptors, and
- level of sensitivity of environment and receptors.

The third component of the assessment examines the environmental management performance of a licensee. The EPA will take into account a licensee's environmental performance based on their compliance history, the regulatory actions the EPA has

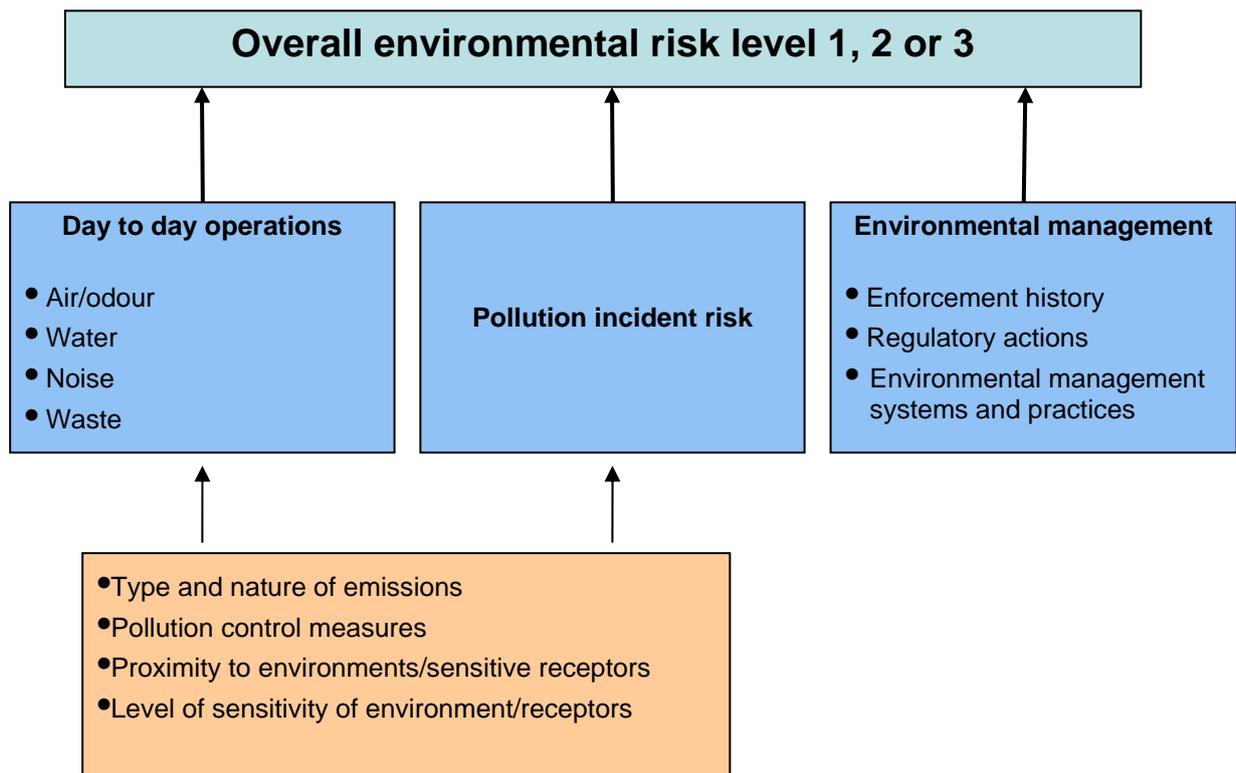
needed to take to respond to incidents and non-compliances, and environmental management systems and practices the licensee has in place to control and mitigate environmental risks. Based on this assessment each licensee will be allocated an environmental management category – A, B, C, D or E – with category E being allocated to the poorest environmental performers.

The results from the three components of the risk assessment will be used to determine the environmental risk level for each licence, with each licence allocated to one of three risk levels – level 1, 2 or 3 – with level 3 being the highest risk.

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.

Figure 2.2 provides an overview of the risk assessment process.

Figure 2.2 Risk assessment process



Environmental risk levels allocated to each licence will be available on the EPA's Public Register, providing greater information to the community about environmental risks and environmental performance of individual licensees and the EPA's regulatory decisions.

It is proposed that the environmental management categories (A, B, C, D or E), allocated to the licensee during the third component of the risk assessment process, will also be considered in calculating licence administrative fees.

While the introduction of the proposed the risk assessment process does not require legislative changes, the above proposed change to calculating the administrative fee will require amendments to the POEO General Regulation.

2.2 Change to the calculation of licence fees

Schedule 1 of the POEO General Regulation prescribes the licence administrative fees for environment protection licences. Fees are based on particular industry sectors (fee-based activities) and the scale of these activities. The fees reflect a partial recovery of EPA regulatory costs. However they do not take account of a licensee's environmental and compliance performance or the subsequent level of EPA regulatory intervention required to be undertaken.

It is therefore proposed that the current method of calculating licence administrative fees be amended to incorporate a link between the environmental performance of a licensee and licence fees.

Licence fees for premises with poor environmental performance will be set at a level that reflects the level of regulatory effort required to manage these premises, ensuring that those who create the need for regulation bear the cost of that regulation. The proposal will also acknowledge the positive environmental management practices and systems licensees have put in place to make environmental improvements and reduce the likelihood of an environmental incident or non compliances from occurring.

2.2.1 Options considered

Three options have been considered for amending the calculation of the licence administrative fee:

Option 1 – no change (base case)

Under this option, there would be no change to the way licence administrative fees are calculated.

Option 2 – maintain the current method of calculating fees in Schedule 1 of the POEO General Regulation and introduce a new component based on a licensee's regulatory performance

Under this option, in addition to the fee applied in Schedule 1, the administrative fee would be based on the compliance history of a licensee and the regulatory actions the EPA has been required to take to respond to environmental incidents and non-compliances identified; for example, successful prosecutions, number of penalty notices issued, number and type of regulatory notices issued and number of non-compliances reported by licensees.

Licence fees would increase for those licensees who have a record of poorer environmental performance, resulting in these licensees being required to pay higher fees than those with better environmental performance.

Option 3 – maintain the current method of calculating fees in Schedule 1 of the POEO General Regulation and introduce a new component based on a licensee’s regulatory performance, including positive environmental management practices adopted by licensees

Similar to option 2, this option will ensure that the type and scale of activity being undertaken at the premises and the level of environmental performance would remain in determining the licence administrative fee. In addition, this option would recognise where a licensee has put in place environmental management practices such as environmental management systems to reduce the likelihood of an incident or non-compliance. It will also recognise where licensees have made improvements to rectify issues.

Licensees will have the ability to directly influence the environmental management category determined for their activity, and therefore the level of licence fee required to be paid, by improving their environmental performance and compliance and having positive environmental management systems in place.

This option will also result in improved environmental outcomes as there will be a strong incentive for licensees to improve their environmental performance.

Under option 3 licence administrative fees would be calculated as follows:

$$\begin{array}{l} \text{Number of} \\ \text{administrative fee units} \\ \text{(as prescribed in Schedule 1 of} \\ \text{the POEO General Regulation)} \end{array} \quad \times \quad \begin{array}{l} \text{Fee unit amount} \end{array} \quad \times \quad \begin{array}{l} \text{Environmental} \\ \text{management factor} \end{array}$$

An *Environmental management calculation protocol* (the Protocol) has been developed for the EPA to determine an ‘environmental management category’ for each licence. The Protocol includes the criteria and methodology the EPA will apply in allocating a category to each licensee.

The 'environmental management category' will determine the 'environmental management factor' (contained in the Amendment Regulation) to be used in calculating the licence administrative fee.

The Protocol will be published by the EPA on its website and in the *NSW Government Gazette*, and is available for public comment as part of the current consultation process.

Table 2.1 below outlines the proposed Environmental management factors to be applied when calculating the licence administrative fee.

Table 2.1: Proposed environmental management factors

Environmental management category	Environmental management factor
A	0.95
B	1
C	1.4
D	1.9
E	3

The United Kingdom Environmental Agency (UKEA) has had a similar system in place for a number of years through the Operational risk appraisal (Opra) scheme (UKEA, 2013). The Opra system is used to assess risk to the environment from sites regulated with environmental permits. The results of the assessments allow UKEA to target their resources at those facilities with the higher risk to the environment and poorly performing sites. The outcomes of the risk assessment process are used to set licence fees, with fees adjusted annually based on a permit holder's enforcement history. This annual assessment can result in poorer environmental performers paying increased fees.

Option 3 is a similar approach to the UK Opra scheme. Under this option, licensees who have demonstrated themselves to be good environmental performers and have had no enforcement and regulatory actions over a period of time will benefit from lower licence fees. This will provide an incentive for licensees to improve their environmental performance. The existing licence fee structure does not allow for this possibility.

Option 3 also ensures that those creating the need for government regulation bear the costs of that regulation, with those requiring additional regulation due to their environmental performance being required to pay additional fees.

It is therefore considered that option 3 is the preferred option for the amendment of the method for calculating licence administrative fees.

2.2.2 Costs and benefits of the proposed options

Option 1

Under this option, there is no change in the way that administrative fees are calculated. This arrangement acts to undermine the 'polluter-pays' principle. Existing cross-subsidy arrangements continue – with well-performing licensees contributing to the cost of the additional regulatory effort required to deal with poor-performing licensees. The fee framework continues not to provide an incentive for licensees to improve their environmental performance as there is no financial benefit associated with being a better performing licensee.

Option 2 – This option represents a significant step towards a risk-based licensing framework. By taking into consideration historical data on licensee compliance and associated regulatory effort, there is a strengthening of the 'polluter-pays' principle.

By linking fees to compliance and regulatory effort, cross-subsidisation of poor performers is reduced. Additionally, the fee framework provides some degree of incentive to improve environmental performance as annual reviews of environmental management categories will take into account any improved compliance and therefore reduced regulatory effort.

Improved performance can result in a financial gain to licensees and reduced costs to the community (i.e. reduced impacts to the environment and people).

However, under this option the incentive effect would be blunted due to perceived inequity in the licence fee framework. Some licensees may have high 'compliance' levels and low 'regulatory intervention' due to statistical chance. That is, through chance they have not suffered an incident and/or been investigated due to good luck rather than good management. Under option 2 such licensees would be treated the same as other licensees who had achieved positive results due to effective environmental management practices.

From the EPA's perspective, a move to a risk-based licensing framework improves the efficiency and effectiveness of regulatory effort through the targeting of resources to 'higher' risk licensees.

Although a comprehensive risk assessment for each licensee has not been completed, based on informed predictions it is not expected that total licence fee revenue will change significantly. (Fee indexation is a separate matter that ensures fee levels remain constant in real dollar terms (see Sections 3 and 4 of this RIS)).

Some individual licence fees are expected to change to reflect their environmental management performance – the level of change will depend on the level and type of regulatory actions the EPA needs to take. This may result in increased fees, no change in fees or decreased fees.

A further benefit of this option is that the greater transparency associated with the environmental management performance of individual licensees will provide greater community confidence that high-risk licensees and premises are being adequately and appropriately regulated.

Option 3 – Option 3 offers the same benefits as outlined in option 2. However, it improves on option 2 by addressing a key weakness – that of perceived inequity in the fee framework as discussed above.

As noted previously, a licensee may have very poor or non-existent environmental management performance systems in place, yet (due to good luck) not have suffered an incident. Treating such licensees the same as licensees with effective environmental management systems and practices in place is inequitable and also does not adequately assess the true level of risk.

Option 3 proposes to consider the management systems and processes licensees have in place as part of determining the environmental management category. Licensees with environmental management and due diligence programs will be rewarded for their efforts. This further reduces inefficient cross-subsidisation and further increases the incentive to improve environmental performance, leading to better environmental and community outcomes.

2.2.3 Summary

Option 3 is the preferred option because it maximises benefits associated with more efficient regulatory practices and incentives for improved licensee performance.

Option 3 will best ensure that licensees' performance and practices will inform the calculation of licence fees, and that the licence administrative fee is also reflective of the nature and scale of the activity being undertaken. Those licensees who have demonstrated themselves to be good environmental performers and have effective environmental management systems and practices in place will benefit from lower licence administrative fees. As a result the framework provides incentives for licensees to improve their compliance and environmental performance, which will benefit the community and the environment.

The proposed amendment also ensures that those creating the need for regulation bear the costs of that regulation, with those licensees requiring additional regulatory intervention as a result of poor environmental performance being required to pay higher fees to cover the costs of that increased regulatory response.

The EPA will monitor the scheme following its implementation and will conduct a review to ensure that it is effective in meeting its objectives.

3. Indexing of environment protection fees

3.1 Administrative fee

The POEO Act requires that all environment protection licence holders pay a licence administrative fee with the amount of the fee prescribed in the POEO General Regulation. The current administrative fee is based on the type and scale of activity being undertaken and is calculated by multiplying the number of fee units applicable for that activity (as specified in Schedule 1 of the POEO General Regulation), by the administrative fee unit amount. The administrative fee unit amount is prescribed in clause 9 of the POEO General Regulation.

When the POEO General Regulation was first made the administrative fee unit was \$95. In 2007/08 the fee unit was increased to \$100 as part of a partial Consumer Price Index (CPI) catch up. In 2009/10 the administrative fee unit was increased to \$105, with a five-year staged increase to reflect increases in the EPA's labour and other costs. The staged increases applied until 1 July 2012.

The objective of this amendment is to ensure that the value of the administrative fees is maintained in real terms by continuing the staged annual increase in administrative fee units.

3.1.1 Need for amendment

Without further indexation of the administrative fee, licensees will progressively pay lower fees in real terms, thereby undermining the 'polluter-pays' principle behind the administrative fee. By the nature and scale of their activities, licensees create a need for regulation and it is appropriate for licensees to bear these costs. Without indexation, licensees will pay progressively less and less of the regulatory costs, thereby shifting the cost burden to the general community (through the tax system).

Although the indexation of the administrative fee has previously been linked to the CPI, this index reflects 'cost of living' increases and does not necessarily reflect the increases to the costs of regulating. To this end, a more appropriate price index is required.

3.1.2 Objective of the amendment

The objective of this amendment is to ensure that the value of the administrative fee is:

- maintained in real terms by continuing the staged annual increase in administrative fees units, and
- the index used best reflects increases in the costs of regulating licensees.

3.1.3 Options considered

Two options for amending the licence administrative fees for environment protection licences were considered:

Option 1 – no change (base case)

Under option 1, the administrative fee unit would remain at its current rate and would not be indexed. This option does not meet the objective of continuing to ensure that the administrative fee is maintained at its current level in real terms and reflects the increases to the costs of regulating. Therefore it is not considered further.

Option 2 – Under this option the POEO General Regulation would be amended to allow indexation using the NSW public-sector-wide price index.

The proposed changes to the administrative fee unit are detailed in Table 3.1, and are based on annual indexing using the NSW public sector wage price index (WPI) published by the Australian Bureau of Statistics (ABS, 2013).

The WPI better represents the cost increases faced by the EPA than the CPI, and because the majority of EPA costs are salary and wage costs the WPI is the most appropriate to use. The ABS provides an independent and statistically robust estimate of the NSW public sector WPI.

As the EPA adjusts fees at the beginning of each financial year, it is proposed to use the March Quarter WPI to adjust fees in July.

3.1.4 Costs and benefits of the proposed amendment

Table 3.1 shows forecast administrative fees for the period 2013–14 to 2018–19. Fees are indexed to ensure that the real value (as at 2011–12) are maintained (i.e. two increments of 2.8 per cent and 2.8 per cent will be applied to adjust for the absence of a change in the fee during the 2013/14 period). The administrative fee unit amounts are rounded to the nearest dollar, as has historically been the case, to simplify licence administrative payments that are calculated using the administrative fee unit.

Table 3.1: Proposed amendments to the administrative fee unit

Period ^a	Administrative fee unit	Annual increase in total revenue
2013–14	\$113	\$0
2014–15 ^b	\$119	\$903,000
2015–16	\$122	\$451,000
2016–17	\$125	\$451,000
2017–18	\$129	\$602,000
2018–19	\$133	\$602,000

^a Increases in licence fees have historically been applied in line with the financial year.

^b Two increases will be applied (2 x 2.8%) in 2014/15 to adjust for the lack of increase in the Administrative Fee Unit in the 2013/14 period.

Keeping licence fees constant in real terms is likely to result in better community and environmental outcomes as the polluter-pays principle is not undermined. That is, licensees continue to bear costs arising from their activities, and the community is not asked to subsidise the cost of regulating licensees.

3.1.5 Summary

Option 2 is the preferred option since it continues to ensure that the administrative fee unit reflects changes in EPA costs, ensuring that the value of the administrative fees are maintained in real terms. In addition it would ensure that those costs are paid by the regulated community.

The WPI is the preferred price index because it ensures that fee increases are linked to actual increases in the cost of regulating licensees.

3.2 Clean-up, prevention and noise control notice fees

The POEO General Regulation prescribes fees for regulatory authorities to charge when issuing clean-up, prevention and noise control notices in accordance with the POEO Act.

Authorised officers of the EPA and authorised local council officers can issue these notices for the following purposes:

Clean-up notices – under section 91 of the POEO Act, a clean-up notice can be issued when it is reasonably suspected that a pollution incident has occurred or is occurring or is likely or imminent. The notice may direct that action is to be taken to prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or likely to occur from an incident. The notice details the specific clean-up action required and timeframe for completion.

Prevention notices – under section 96 of the POEO Act, a prevention notice can be issued where it is reasonably suspected that an activity has been or is being carried

out in an 'environmentally unsatisfactory manner'. The notice specifies preventative actions that must be taken to improve environmental performance, such as installing or repairing controls to prevent water pollution. A prevention notice may order that plant or equipment are not operated until the authority is satisfied that appropriate controls are in place.

Noise control notices – under section 264 of the Act, a noise control notice may be issued to prohibit the causing, permitting or allowing of any specified activity or any specified article used or operated that emits noise above a specified level. The notice may specify days or times on specified days during which the prohibition imposed by the notice is to operate, or the prohibition may operate at all times.

The recipient of clean-up, prevention and noise control notices must pay a prescribed fee, representing the administrative costs of issuing the notice, to the authority that issued the notice.

It is important that local councils and the EPA are able to adequately recover the costs of issuing these notices and ensure that the cost of regulation is passed onto the person responsible for the incident or issue.

Clean-up, prevention and noise control notices are key tools available to councils under the POEO Act for regulating non-scheduled premises.

The RIS for the POEO General Regulation 1998 outlined the fee structure for the issue of clean-up, prevention and noise control notices, which was based on the level of resources required to issue those notices (EPA 1998). In 2009, the administrative fee for these notices was increased from \$320 to \$433 and notice fees were then increased annually by the projected CPI level until 2012–13. Table 3.2 outlines the fees for these licences between 2009 and 2012–13.

Table 3.2: Administrative fee values for clean-up, prevention and noise control notices 2009 to 2012

Period	Notice Administrative Fee
2009–10	\$433
2010–11	\$444
2011–12	\$455
2012–13	\$466

3.2.1 Need for amendment

There will be no further increases provided for in the POEO General Regulation after 2012–13. The objective of this amendment is to continue the indexation of notice fees so that the value of those fees are maintained in real terms over time.

3.2.2. Options considered

Two options were considered with respect to fees for issuing notices.

Option 1 – no change (base case)

Under this option, notice fees would not change, which would mean that the fees would not reflect the true costs of EPA and local councils.

Option 2 – Under option 2 there would be a continuation of the annual indexed increases to notice fees. Notice fees would be increased from \$466 to \$492, to take into account the changes in EPA and local council costs since 2012, in line with the NSW public sector WPI (see section 3.1 for WPI details). Table 3.3 shows the proposed notice fee amounts over the next five years, and outlines a 5.6 per cent increase to the fee in 2014–15 to make up for the lack of increase in 2013–14.

Table 3.3: Proposed amendments to the clean-up, prevention and noise control notice fee

Period	Notice Fee
2013–14	\$466
2014–15 ^a	\$492
2015–16	\$506
2016–17	\$520
2017–18	\$535
2018–19	\$550

^a Two increases are applied (2 x 2.8%) in 2014–15 to adjust for the lack of increase to the notice fees in the 2013–14 period.

This option would align the notice fee with the increase in EPA and local council costs over time as a result of increases in public sector wages, and would maintain the value of those notice fees in real terms. It would also provide certainty to the regulated community about the fees associated with clean-up, prevention and noise control notices for the next five years.

3.2.3 Costs and benefits of the proposed amendment

Based on the number of clean-up, prevention and noise control notices issued by the EPA over the past five years, an average of 70 notices are issued each year. It has been estimated that councils issue approximately 1520 notices per year (i.e. 10 notices per council each year). This is based on a survey of local councils undertaken in 2003 as a part of implementing the *Protection of the Environment Operations (Amendment) Act 2005*, Local council input on the effectiveness and use of environment protection notices (EPA, 2003). A recent survey of a selection of local councils has indicated that the numbers of notices issued by councils has, on average, remained similar to 2003 levels.

These estimations result in a total current revenue, for EPA and local councils, of approximately \$740,940. However, it should be noted that under the POEO Act, the

issuing authority may 'waive' the payment of administrative fees for the issue of these notices.

Table 3.4: Proposed amendments to the clean-up, prevention and noise control notice fee

Period	Notice Fee	Annual increase in total revenue^a
2013–14	\$466	\$0
2014–15	\$492	\$41,340
2015–16	\$506	\$22,260
2016–17	\$520	\$22,260
2017–18	\$535	\$23,850
2018–19	\$550	\$23,850

^a Note that this revenue is split between EPA and councils.

In real terms, no additional costs are faced by entities issued a notice. Further, by increasing notice fees in line with increases in the cost of regulation, other licensees and the general community are not asked to subsidise entities issued a notice.

3.2.4 Summary

Option 2 is the preferred option because it ensures that those entities issued a notice are responsible for meeting costs arising from their actions. Other licensees and the community are not asked to subsidise the cost of issuing notices.

The proposed amendment ensures the continuation of the annual indexed increases to notice fees and offers a simple method of ensuring that notice fees move generally in line with the EPA and local councils' costs required to issue these notices. This would ensure that the real value of these fees is maintained over a five-year period.

4. Indexing load-based licensing fees

Under the POEO General Regulation, licensees undertaking specific fee-based activities are required to pay LBL fees. LBL fees are linked to the quantity and type of pollutants discharged from a premises and the receiving environment (a direct application of the 'polluter-pays' principle). Schedule 1 of the POEO General Regulation specifies those activities that are subject to LBL fees. Currently around 276 licensees are subject to the LBL scheme. This is approximately 11 per cent of all environment protection licence holders.

The LBL scheme focuses on the total amount of pollution emitted each year, with the annual LBL fee calculated based on the potential environmental impact of that pollution. The scheme applies the 'polluter-pays' principle to provide an incentive for licensees to control, reduce and prevent air and water pollution: the lower the potential for environmental impact and the lower the pollutant load, the lower the fee. This approach offers licensees a financial incentive to reduce their pollution. It also encourages licensees to invest in pollution reduction in those areas where it will most reduce fees and therefore provide the greatest improvement to the environment.

4.1. Pollutant fee units

Clause 19 of the POEO General Regulation outlines the method by which those licensees subject to LBL are to calculate their LBL fees. One of the components of the LBL fee is the pollutant fee unit.

The pollutant fee unit was incrementally increased from \$0 to \$35 in the first five years of the LBL scheme to aid transition of the scheme. The pollutant fee unit was then increased in 2006 to \$36.75 as a partial CPI catch up of fees.

In 2008, a series of staged increases to the pollutant fee unit were introduced to ensure that the incentives for industry to reduce pollutant emissions were not eroded over time. At that time the pollutant fee unit was automatically indexed to the CPI.

Table 4.1 outlines the prescribed value of the pollutant fee unit from 2008 to 2012. There have been no increases in the pollutant fee unit since 1 July 2012.

Table 4.1: Pollutant fee unit values from 2008 to 2012

Period	Pollutant fee unit
2008–09	\$38.61
2009–10	\$39.58
2010–11	\$40.57
2011–12	\$41.58
2012–13	\$42.62

To ensure that the amount of the pollutant fee unit remains relevant compared with inflation and continues to provide an incentive for licensees subject to LBL to reduce pollution in a cost-effective way, it is proposed that the POEO General Regulation be amended to allow for a continuation of the staged increases to the pollutant fee unit.

4.1.1. Options considered

Two options have been considered for the setting of the pollutant fee unit.

Option 1 – no change (base case)

Under option 1 the pollutant fee unit would not be changed and the expected annual revenue received from licensees would remain at current levels. As outlined in the RIS for the 2008 General Regulation, allowing the pollutant fee to be eroded over time, in real terms would reduce the incentive for industry to reduce pollutant emissions.

Option 2 – Option 2 (the preferred option) would continue the historic indexing of the pollutant fee unit, based on the CPI. Table 4.2 shows the proposed pollutant fee unit amounts over the next five years, and outlines a 5 per cent increase to the pollutant fee unit in 2014–15 to make up for the lack of increase in 2013–14.

Table 4.2: Proposed amendments to the pollutant fee unit

Period ^a	Pollutant fee unit	Annual increase in total revenue ^b
2013–14	\$42.62	\$0
2014–15 ^c	\$44.78	\$1,600,000
2015–16	\$45.90	\$800,000
2016–17	\$47.05	\$900,000
2017–18	\$48.23	\$900,000
2018–19	\$49.44	\$900,000

^a Increases in licence fees have historically been applied in line with the financial year

^b Figures have been based on current pollutant discharge amounts and number of licensees.

^c Two increases are to be applied (2 x 2.5%) in 2014/15 to adjust for the lack of increase in the pollutant fee unit in the 2013–14 period.

This option will ensure that the relevance of the LBL scheme is maintained as pollutant fees will continue to provide an incentive to reduce pollutant emissions, while providing all licensees subject to LBL with a clear indication of the impact on their LBL fees for the following five-year period.

4.1.2. Costs and benefits of the proposed amendment

Keeping LBL fees constant in real terms is likely to result in better community and environmental outcomes as the 'polluter-pays' principle is not undermined and the incentive to reduce pollution is not diminished.

4.1.3. Summary

To ensure that LBL fees remain relevant and that the incentive to reduce emissions is maintained in real terms, continued increases to the price per pollutant fee unit are required. The proposed amendment also provides clarity for licensees subject to LBL on future increases to the pollutant fee unit price.

5. References

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