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Attention Mr Barry Buffier
Chair & CEO
NSW Environment Protection Authority
PO Box A290
Sydney South NSW 2000

Proposed Risk Based Environmental Regulatory Framework

Dear Barry

I write to you on behalf of the Members of WCRA who collectively express their serious concerns about the mechanics and the general environmental objectives of the Proposed Risk Based Environmental Regulatory Framework ("**PRBERF**") framework.

Our concerns are as follows-:

- EPA is unable to provide any clear answer in relation to the cost of the PRBERF for individual sites. In fact it appears the possible cost impacts on the business are heavily dependent on the opinions of individual EPA Inspectors;

- At the various consultation forums Members have asked the following question - **"has the EPA established an appeal mechanism into the body of the PRBERF whereby the licensee has the right to challenge a decision of an individual EPA Inspector"**. To date no satisfactory answer has been provided to this very important question;

- There is a widespread concern amongst WCRA Members that the PRBERF only targets licensed facilities, thereby further adding to the operating costs of such facilities and widening the cost gap in favour of unlicensed facilities;

- The PRBER does not draw any attention to non-licensed premises that may potentially be carrying out illegal processing or waste activities;

- However, the EPA is currently considering a lowering of the thresholds for waste activities therefore we are likely to see many more facilities being licensed. WCRA is concerned there may be flow-on effects for this that have not been fully considered;

- In the risk assessment criteria, EPA does not consider future improvements that are currently underway. History alone is not a reliable means of assessment. It may show that a problem existed in an area of operation, however the problem could have been addressed by a change in the method of operation and no longer be a matter of concern. Under the PRBERF however, an error of judgement could result in:
  - A charge
  - A fine
  - A costly Court challenge
  - A publicly available offence recorded against the business
  - Ongoing reputational damage
  - An worsened risk profile
  - An increased Licence fee

- Therefore the business will pay a penalty that is disproportionate to the level of the mistake both in on-going fees and damage to reputation;

- It is commercially sensitive to label a licensee as low, medium or high risk. It is a very competitive environment and these labels could be detrimental to the industry. This could open the door to media vilification of a business or organisation due to a simple error;

- Public & media perception of this knowledge could be very harmful to the business;

- Given the substantial negative implications of receiving and paying an EPA fine, most business operators are likely to opt for a challenge. This will tie up valuable EPA resources in Court time. We are not sure the impact of this unintended consequence of the PRBERF has been fully considered;

- In the light of the above, we are uncertain what are the intended outcomes of the PRBERF for the EPA? If the objective is mainly to improve the public perception of the EPA and to promote this to the public, WCRA believes the funding should come from State Government revenues rather than this type of industry impost;

- WCRA does not resile from the obligation of industry operators to conduct their businesses in a safe, responsible and law-abiding manner and we are not opposed to harsh penalties being imposed on those who show a blatant disregard for this obligation. Our concern is that the waste management industry already makes a significant contribution to State & Federal Government revenues via the imposition of a range of specific taxes and levies (for example the Waste & Environment Levy, Liquid Waste Levy, Depot License fees, Carbon Tax, GST, Load-based licenses, etc.).

- WCRA is also concerned about a future requirement for financial assurances. We believe this concept and its implications need to be fully explored via proper industry consultation.

- NSW industry is already having a difficult time in the current economic climate and further regulatory and financial constraints will certainly not in themselves improve their performance.

- WCRA believes the PRBERF will lead to an unproductive, adversarial relationship between industry & regulators and to deteriorating business performance associated with higher workloads and increased levels of work stress.

WCRA and its members are very pleased to be working with the NSW Government, the EPA and other regulatory authorities in creating a better NSW environment, but we are not convinced that the Proposed Risk Based Environmental Regulatory Framework will benefit that relationship or significantly improve the protection of the environment.

We would be happy to elaborate on any aspect of this submission.

Yours faithfully,

Tony Khoury
Executive Director