

**Consultation on the draft
Environment Operations
(General) Amendment
(Newcastle Air Monitoring)
Regulation 2015**

**Summary of public
consultation issues and
outcomes**

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Published by:

Environment Protection Authority

59 Goulburn Street, Sydney NSW 2000

PO Box A290, Sydney South NSW 1232

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publications requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask for 131 555

Speak and listen users: phone 1300 555 727, then ask for 131 555

Email: info@environment.nsw.gov.au

Website: www.epa.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au

See also www.epa.nsw.gov.au

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Summary of public consultation issues and outcomes

This document presents a summary of the key issues raised in submissions during consultation on the draft Environment Operations (General) Amendment (Newcastle Air Monitoring) Regulation 2015.

The Environment Protection Authority (EPA) received nine written submissions. Four submissions voiced some degree of support for the Regulation. Three submissions did not give support to the Regulation and two submissions opposed the regulation. The key issues raised in the submissions and the EPA responses to these issues are summarised in the table below.

Key Issues Raised	EPA Response	Change to draft Regulation needed?
Licensees included in the Network		
The Newcastle Air Quality Monitoring Network (the Network) should only include licensees which have air quality monitoring requirements or scheduled activities that emit oxides of nitrogen, sulphur dioxide or particulate matter.	All licensees in the Newcastle local government area (LGA) have been included in the Network. However, as the amount of a licensee's emissions of oxides of nitrogen, sulphur dioxide and particulate matter is used to calculate a licensee's levy, licensees which do not emit these contaminants will not pay a levy for the Network.	No
Distribution of Emissions		
The distribution of shipping and railway emissions is not clear and does not reflect the polluter-pays principle.	The presence of ships and trains in the Newcastle LGA is due to the operations of licensees carrying out 'shipping in bulk' and 'railway systems activities' scheduled activities. Attributing emissions from these ships and trains to the emissions of licence holders authorised to carry out the scheduled activities of 'shipping in bulk' and 'railway systems activities' follows the principle of 'polluter-pays'.	No
The SKM Jacobs report proposed an alternate approach to apportioning shipping emissions whereby costs are attributed to shipping movements to more accurately reflect total emissions from ships serving the individual industries.	SKM Jacobs noted the proposed approach in distributing shipping emissions and suggested an alternate approach to apportioning shipping emissions. EPA considered the approach suggested by SKM Jacobs during the initial development of the funding model. This approach was found to require more information from industry and to be more complicated to administer than the distribution method used in the draft regulation and would make it extremely difficult to levy licensees at the start of the operational year.	No
The Network is modelled on the Upper Hunter Air Quality Monitoring Network (Upper Hunter Network). However no Upper Hunter Network licence holders are responsible for emissions they do not cause or they have no control over.	The shipping emissions resulting from scheduled activities in the Newcastle LGA represent a significant contribution to the local ambient air quality and are forecast to increase. Emissions from commercial shipping would not occur in the Newcastle LGA except for the activity of 'shipping in bulk' being undertaken by licence holders in the Newcastle LGA, therefore these emissions are directly attributable to licence holders.	No
The multiple of nine applying to shipping in bulk premises with an annual loading capability of greater than 500,000	Clause 79T was developed to equitably distribute commercial shipping emissions (and the associated levy) between licence holders which undertake the 'shipping in bulk' scheduled activity. The formula for distributing shipping emissions used in the draft Regulation was	No

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tonnes per annum – should only be three times the base portion.	<p>changed slightly from the funding model proposed in the discussion paper released in September 2013 to account for the different tonnages of material permitted to be handled at licenced facilities. The shipping emission-related levies proposed in the draft Regulation results in establishment and first year operational costs ranging from approximately \$950 to \$2,600 for these licence holders. Please note this levy is in addition to the levy these facilities are liable for due to emissions released directly from their premises.</p> <p>As a result of the change from the initial proposed funding model, 10 licensees will see a levy reduction of approximately \$334 and 8 licensees will see a levy increase of approximately \$23 or \$667. The EPA considers this to be reasonable and is in keeping with the 'polluter pays' principle. The multipliers were chosen as they are consistent with the administrative fee units in Schedule 1 of the POEO (General Regulation) 2009 for the activity scales relevant to the activity of 'Shipping in Bulk'.</p>	
Network Costs and Funding		
It is unclear how the EPA intends to fund the costs for obtaining the data used in levy calculations and calculating the levy and if those costs are intended to be a part of the 'general program costs component' of the network.	The bulk of the information that will be used to support the calculation of emission estimates will be sourced from the EPA's Air Emissions Inventory (AEI) program and/or the National Pollutant Inventory (NPI). No part of the costs of those programs will be recovered by the Newcastle environmental monitoring levy. Other costs incurred specifically for the purposes of calculating the Newcastle environmental monitoring levy will be included in the general program costs component of the levy.	No
An estimation of the 'general program costs component' should be made available by the EPA prior to 1 July to ensure transparency of the costs associated with the program.	The EPA is committed to transparency in regulatory activities. As a general policy, the costs of the program will be reported to licensees. It is anticipated that this information will be reported either by letter or on the Newcastle Local Air Quality Monitoring Network webpage.	No
Emissions Data		
The general accuracy of emission data used in the levy calculations and the requirement of using 'comparable' industry data for those licensees with no relevant emission data are questioned.	The bulk of emission data used in calculating the levy will be sourced from the AEI. Most industries have already reported operational information to the AEI and using this information will reduce the compliance cost burden on industry in the Newcastle LGA.	No
It is imperative that the most recently available air emission data is utilised to ensure accurate levy calculations.	The most recent AEI information will be used in the levy calculations. Licence holders are allowed to submit more up to date emission estimates to the EPA for use in levy calculations if the EPA is satisfied with the methodologies used in the calculation of those new estimates.	No
NPI data is potentially seven years more up to date than the AEI.	Only a few industries in the Newcastle LGA submit information to the NPI. AEI data will be used. Where this is not available NPI data will be used where available and if appropriate.	No

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Payment Timing and Interest		
It would be more appropriate for the levy payment period to be 60 days after the notice is given by the EPA.	The 30 day payment period is a standard payment period length and has been used successfully in the Upper Hunter Air Quality Monitoring Network. Clause 79P(3) of the draft Regulation allows the EPA to specify a longer payment in the written annual levy notice if considered appropriate.	No
The 25% interest to be paid on overdue levies is unreasonably high and requires justification.	This is the same interest rate used in the Upper Hunter Air Quality Monitoring Network.	No
Network Review and Reporting		
A review of the Network should be completed after the first year of operation.	The first report on the monitoring network is due by 1 September 2018. 1 year is considered too short a time period in which to meaningfully review the Network.	No
A report containing an analysis of the result of the air quality monitoring should be published annually.	The EPA will take this under consideration.	No
The EPA needs to establish a robust and reactive reporting regime associated with the NLAQMN to communicate air quality monitoring results as they become available.	Emission monitoring data is available on the EPA/OEH web site similar.	No
A detailed assessment of costs is appreciated as there is no obvious driver for the EPA to ensure that costs are reasonable.	The EPA is required to prepare a report containing the results of an independent audit of the efficiency and cost effectiveness of the monitoring program during the development of the draft Regulation and every four years after the commencement of the monitoring program.	No
Inception		
The air quality monitoring network may be the result of reacting to media and campaign perceptions of air quality relating to the coal industry and not a result of evidence about the air quality in the Lower Hunter.	The EPA commenced investigations in 2011 into the need for a local ambient air quality monitoring network in the Newcastle LGA. These investigations included reviews of the meteorology in the Newcastle LGA, analysis of available air quality data for the area, advice from NSW Health's Air Pollution Expert Advisory Committee, and NSW Health. The results of the EPA's investigations and the forecasted increase in population growth in the Newcastle LGA demonstrate the need for this Network to ensure that air quality does not deteriorate and Government has the data it needs to respond to any indications that a cumulative impact is developing.	No
It is not considered that the EPA has applied the principles set out in the Regulatory Impact Assessment Checklist.	The EPA has followed the Principles of Better Regulation as set out by the Department of Premier of Cabinet during the development of this regulation and will continue to meet these requirements.	No
Green Tape Burden		
The levy would be an additional burden on licensees in the Newcastle LGA.	While there will be an additional cost placed on those licensees that will be required to pay a levy, it is appropriate and proportional to the benefits that the Network will deliver to the Newcastle community and licensees within the Newcastle LGA.	No

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	The Newcastle Local Air Quality Monitoring Network draft Regulation was developed under Part 9.3C Environmental Monitoring of the POEO Act. This Part was introduced to enable environmental monitoring programs to be funded by industry following the “polluter pays” principle, which is one of the Ecologically Sustainable Development principles that the EPA is required to have regard to under section 6 of the <i>Protection of the Environment Administration Act 1991</i> .	
Specific Clause Issues		
The licence condition referenced in clause 79T(3) is not specified.	Clause 79T(3) does not refer to a specific condition listed in each licence, but rather states that it is a condition upon which the licence is issued that the licence holder complies with a direction under this clause. This clause is included in the draft Regulation so each licence in the Newcastle LGA will not require a variation resulting from the commencement of this draft Regulation.	No
Clause 79U is not necessary as the monitoring sites are not located on premises subject to EPLs.	Clause 79U requires licence holders to permit entry to EPA authorised persons for the purposes of operating the monitoring program. This can include, but is not limited to, gathering emission information from licensees and access to monitoring sites.	No
Support		
The submitter supports the NLAQMN and welcomes provisions that provide for community access to ‘real-time’ data and require the EPA to monitor and public report on the program every four years.	Noted	No