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Draft publication of monitoring data guidelines
Continuous Improvement Unit
Environment Protection Authority
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Dear Sir/Madam

Publication of monitoring data guidelines - Draft

The Australian Industry Group (Ai Group) welcomes the opportunity to comment on the *Draft Environmental guidelines: Publishing of environmental data*. Ai Group is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than one million employees.

Failure to comply with the Guide to Better Regulation

At the outset I wish to reiterate Ai Group's concerns at the lack of consultation that has been undertaken with industry in relation to the new environmental reporting and incident management requirements on industry, and the failure to undertake a Better Regulation Statement to assess the costs and benefits of the new regulatory requirements. The changes will impose significant additional compliance costs and regulatory burden on NSW businesses, arguably without achieving any improvement in environmental outcomes and at a time of continued economic uncertainty.

Significant increase in compliance costs on industry

The new requirements on industry for publication of monitoring data relating to pollution will significantly increase compliance costs on businesses without achieving identifiable improvements in environmental performance.

Ai Group members with multiple licensed sites and those with single sites operating in sectors that have extensive monitoring requirements have noted that they will need to engage additional personnel in order to meet the proposed data monitoring reporting requirements.

This comes at a time when companies need to address a range of sustainability issues. Surely scarce company resources would be better directed at these matters to improve the sustainability of their businesses

Further, introduction of these changes is inconsistent with the spirit and objective of the NSW and VIC Premiers Interstate Reform Partnership which recognised the “need to develop strong, ambitious proposals to reduce the regulatory burden and ensure greater consistency and transparency in environmental regulation while ensuring environmental protection is not diminished”.

Other key points

We also raise the following concerns about the proposed changes:

- There is insufficient guidance for the range of affected industry sectors to understand the costs and resource implications of the proposed requirements.
- The changes are proposed to be implemented within very short timeframes.
- There is no identified support for industry to make these changes.

Please refer to further detailed commentary in the attachment to this letter.

Recommendations

We recommend that the EPA conducts a round table discussion with representatives of business to ensure that there is full understanding and consideration of the implications of the proposed requirements to industry and the environment.

We seek your feedback on the matters raised in this letter and the attachment.

Yours sincerely,

Mark Goodsell
Director - NSW

Content of published monitoring data

Ai Group seeks clarification of the data that licence holders are required to publish or make available as required. Section 66 (6) (a) of the POEO Amendment Act requires licence holders to publish or make available “any of the monitoring data that relates to pollution”.

The proposed guidelines seem to indicate that all licence monitoring should be reported even though much of that monitoring is unlikely to be related to a pollution event. We contend that the guidelines are not consistent with the wording of the Act.

Ai Group also seeks confirmation that anything that may be required under Commonwealth legislation such as the National Greenhouse and Energy Reporting Act would be excluded from any requirement to be published under the draft Guidelines.

Web-based publication of monitoring data

Ai Group seeks clarification of the requirements relating to the method of publication of monitoring data. The draft guidelines state in Section 2 *Legislative Requirements* that:

- licensees who undertake monitoring as a result of a licence condition publish monitoring data that relates to pollution within 14 days of obtaining the data
- licensees who maintain a website make the monitoring data available in a prominent position on the website

Ai Group understands from the public information sessions (conducted at very short notice) that a corporate website not linked to a specific site does not meet the definition of a website that relates to the “business or activity the subject of the licence”.

Ai Group has licensed member companies with multiple sites which do not have the same operating networks. These sites do not have separate websites relating to the business or activity. Ai Group is advised that the costs associated with linking these various sites to the corporate web-site umbrella would be significant. In just one instance a member company put the cost at millions of dollars.

Further, Ai Group members have expressed significant concern that the proposed requirement that licensees provide an online link to continuous monitoring data poses inherent security risks to factory operations and the integrity of systems.

Publication of continuously monitored data

The cost impost of meeting the reporting requirements associated with continuous monitoring is particularly onerous. In one example, an Ai Group member company advises that one of its sites continuously monitors two elements, generating in the vicinity of 900,000 data points each month. This does not include other sampling and monitoring undertaken at that site. The company concerned advises that it will need to employ an additional person at significant cost to edit and report this information on an ongoing basis.

The draft guidelines indicate that licensees with continuous monitoring should provide a link to the monitoring data and provide monthly reporting within 14 days. Ai Group contends that licensees which provide a link should not also be required to provide monthly reporting. This constitutes over reporting and compounds the additional compliance costs to business associated with the new monitoring requirements.

Clarification is sought of the content which the EPA proposes be included in a monthly summary - a statistical summary for the month or tables showing all data for the month. Monthly summaries similar to those outlined in annual returns should be sufficient.

Provision of monitoring data not published

Section 66(6) b of the POEO Amendment Act requires that, if a licence holder does not maintain a website that relates to the business or activity the subject of the licence, the licence holder must “provide a copy of any of the monitoring data that relates to pollution, to any person who requests a copy of the data, at no charge and in accordance with any requirements issued in writing by the EPA.”

It is unclear how many (if any) requests licence holders will receive for the data. Licence holders would have to incur the costs associated with the new requirements even though they receive no requests for the data.

Ai Group member companies do not support provision of data on request free of charge - they should be able to recover the costs associated with producing the reports including the costs associated with employing additional staff to comply with the proposed requirements..

Requirement for provision of data in a format readily understood

Section 3 *General requirements for publishing monitoring data*, states that the “requirements should ensure that the data published is publicly accessible and understood in context”. Section 3.4 *How the data should be published* further states that “The data should be published or provided in a format that is easy for the general public to understand.” What constitutes “easy for the general public to understand” is highly subjective.

Publication within 14 days

Ai Group is concerned that the requirement to publish monitoring data within 14 days of it being obtained is not practical nor reasonable.

Monitoring data that is published without context can easily be misunderstood or misrepresented. The 14 day requirement is not practical and does not provide most licensees with sufficient time to support the information with the necessary contextual information in support of the data without risk of oversimplification or inaccuracies in the data.

For instance:

- In many cases the results of monitoring may not be made available to a licence holder at the same time. A licence may require testing of multiple parameters of the same sample with different analytical testing times. The requirement to report within 14 days of testing may result in the need to report and assess monitoring results on multiple occasions for the same event and without the context of considering all required information.
- The EPA sometimes requires further detailed assessment reports within licences (generally section U) that will often take up to 12 months to complete. The draft guidelines also indicate that this monitoring would have to be published before the assessment report is completed.

Case studies

The proposed guidance should be supported by actual case studies to clarify the actual expectation and impacts in terms of reporting and resourcing requirements across a range of licensed industry sectors. This should include guidance associated with web-based reporting systems.

Revoked licences

The guidelines state that licence holders are required to publish monitoring data relating to suspended and revoked licences. However, Section 66(6) of the POEO Amendment Act refers to licence holders. If a licence is revoked, then the former holder of that licence is no longer the licensee and Ai Group would argue that the requirements to publish monitoring data cease to apply.