



AgForce Queensland Industrial Union of Employers

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Ted Malone MP
Chair, State Development, Infrastructure and Industry Committee
Parliament House
George Street Brisbane Qld 4000

Dear Mr Malone

RE: Submission to the Economic Development Bill 2012

AgForce Queensland is the peak representative body for broadacre agriculture in Queensland and we thank you for the opportunity to make a submission to the Economic Development Bill 2012. Given the very short timeframe for consultation we have had little time to fully consider the amendments of *Environmental Protection Act 1994*.

Firstly, we would like to raise our objection that the official consultation period (8 days) was too short and that AgForce was not consulted prior to the Bill, as some other industry groups were (refer to p21 of the Explanatory Memoranda). AgForce therefore did not see the draft discussion paper on the proposed mine water discharge arrangements. We acknowledge that AgForce did receive an invitation to appear before the Parliamentary Committee on 9 November, 2012, however the timeframes were not sufficient to adequately consult with potentially affected members.

In the Deputy Premier's speech¹ he indicated that the Bill sought to implement specific recommendations from the Queensland Floods Commission of Inquiry (Floods Commission) report, including by providing for the issue of temporary emissions licences (TEL) to allow for temporary discharges as part of the response to an emergency event, including after an emergency has ended. The Bill seeks to amend the *Environmental Protection Act 1994* by inserting provisions which allow holders of environmental approvals to apply for a TEL in response to an 'emergent' event; and amending the emergency powers to include a definition of 'emergency' and to allow all emergency directions to be issue orally. AgForce is adamant that in responding to one emergency event we do not create another emergency for other stakeholders in the catchment of the affected mine.

¹ <http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/121101/Economic.pdf>, accessed 7/11/2012

As the Floods Commission Report points out², mining companies are voluntary participants in the industry and it is their responsibility to ensure that they are able to comply with the environmental requirements set by the Government.

Potential impacts on other water users including downstream primary producers

AgForce is very concerned about the impact that the discharge from mines of salts, sediments and other contaminants or toxins, including metals, will have on the natural environment which forms the basis for the health and livelihoods of primary producers and others downstream from these sites. For example, discharges from Ensham mine in 2008 were ceased after water quality monitoring found the salinity of domestic water supplies for some townships downstream was at unacceptable levels.

Further, in relation to the 2010/2011 floods, the Floods Commission found that it was impossible to determine the cumulative impacts of mine discharges on the marine environment³ pointing to a need for improved monitoring of salts, metals and other contaminants. AgForce sees that effective monitoring of any emergency releases that occur under the proposed amendments to the *Environmental Protection Act 1994* is essential for understanding, and preferably avoiding, any negative impacts.

TEL triggering an automatic review of the Environmental Authority (EA)

In regards to the capacity of a TEL to result in an amendment of the EA Conditions (Clauses 229, 230 and 231), AgForce would agree with the statement in the Explanatory Memoranda that conditions should be amended so that future TELs are not needed, however this should not be achieved by merely amending the EA conditions to increase discharge limits. While we agree that an automatic review of the EA is triggered by the approval of a TEL, there is some concern that if an EA was not sufficient to deal with an (often forecast) emergent event then limits should not be arbitrarily revised upwards.

Therefore greater emphasis should be put on preparation and planning for these events with the automatic review only working to revise EA limits downwards. It may also be appropriate that TEL approvals given in anticipation of an emergent event are contingent on the proponent demonstrating that appropriate preparedness efforts have been made. It should also be clarified about whether compensation is payable to a proponent if the EA review results in a revision downwards of EA limits.

Appropriate preparedness measures at mines should be implemented as a first priority

Accepting that the environmental authorities were not sufficient to allow the mines to deal with the water entering their sites during the 2010/2011 wet season, what efforts have been made by these mines to prepare for future events of a similar nature?

Access to seasonal forecasts

The Floods Commission has recommended that mine operators should obtain the best seasonal forecasts available⁴, and in light of the experiences during the 2010/2011 floods, the definition of emergent event within the Bill as it relates to flooding should not be applied to floods of a commonly-accepted average recurrence interval.

Installation and management of water management infrastructure

² Page 352 of Chapter 13.

³ Recommendation 13.6 and Page 357 of Chapter 13

⁴ Recommendation 13.1

The Floods Commission report concluded that the Ensham mine did not suffer any flooding of its mine pits from the Nogoia River or its tributaries during the 2010/2011 wet season 'thanks to its levee banks'⁵. Prior to the approval of TELs, it is important that mine operators can demonstrate that they have done everything reasonable to prepare their sites for future floods and so minimise the amounts of contaminants that are released under a TEL, or an uncontrolled emergency release.

This could include increasing and improving safe storage of wastes including tailings dams and in-pit water, better controlling mine runoff, diverting floodwaters, and siting of mines outside of higher flood risk zones where feasible. The aim of such preparedness measures should be to remove the need for any contaminant discharges.

Ongoing monitoring of preparedness measures

Risk assessment and site inspections, especially prior to the wet season, should be a continuous undertaking by the Government as suggested by the Floods Commission⁶. There is no mention of this in the Bill or the Explanatory Memoranda.

Definition of Emergent Events is open to interpretation – Clause 357A

The Explanatory Memoranda outlines that the emergent event may be natural, such as a flood or bushfire, or caused by sabotage. This brief test of 'not foreseen' has too loose a definition and there is concern that it might encompass events that could be foreseen and where mitigation measures could have potentially been taken by the proponent but were not. For example, following the events of the 2008 and then 2010/2011 flooding, similar events should now be capable of being foreseen.

Who may Apply for a Temporary Emissions Licence – Clause 357B

The clause outlines that applications can be made in anticipation of an 'emergent event'. Without further detail on when and how such approvals would be provided AgForce is cautious that release may be approved based on forecasts rather than actual events. There is a need to ensure that appropriate mixing/dilution of contaminants occurs to guarantee environmental and human health impacts are minimised. The dilution effect should be managed in such a way as to ensure that the nearest other stakeholder is not exposed to unsafe concentrations of contaminants. Therefore TEL approvals should be conditioned on the basis of actual flows at the mine discharge site, rather than predicted flows or amounts of rainfall received, particularly as the amount of runoff feeding flows could vary considerably depending on seasonal conditions. The conditions should include that the approved waterway flow rate is actually observed before any discharges are made⁷.

As the Floods Commission has identified⁸, if pre-emptive programs are to be granted they need to be drafted conservatively in anticipation of the receipt of other applications within the same catchment. To manage multiple mine releases at the same time of varying quality and volumes of contaminated water during a high flow event, it is vital that cumulative impacts are considered and that these are considered at a catchment scale.

There are no fees prescribed in the Bill for the application costs however given the environmental damage to the catchment that may occur, these should be set to act as an incentive to preparedness and to reflect the cost savings subsequently enjoyed by the mine company as a result of being able to discharge contaminants.

⁵ Page 355 of Chapter 13

⁶ Page 354 of Chapter 13

⁷ Page 363 of Chapter 13.

⁸ Page 362 of Chapter 13

Deciding Application – Clause 357C

AgForce can appreciate that the longer water is stored in a mine pit, the higher the salinity levels, and so a timely approval of a TEL application release of water will potentially reduce environmental damage from an uncontrolled release.

Limiting the retention of water in mine pits points towards having a more flexible system to allow the release of water when flows are sufficient to dilute contaminants to safe levels, or that water treatment levels prior to release need to be lifted the longer water is held in the pits, or combinations of both these approaches.

Timeliness of TEL approvals needs to be balanced against the time required for an appropriate and rigorous assessment of the potential impacts of the release of contaminants on other members of the community downstream. A 24-hour period would appear to be too short to robustly undertake the considerations required. The Floods Commission identified⁹ that DERM could not process applications within hours due to the rigour with which they assessed them. They pointed to pre-emptive relaxations in advance of events to avoid delay. It is stressed that if insufficient information is available to determine whether there is an emergency/emergent event justifying release, then all applications should be refused.

Criteria for Decision – Clause 357D

Clause 357B (4b) that requires that a TEL application must be supported by enough information to enable the administering authority to decide the application, and Clause 357C requires that an application be decided within 24 hours of receipt. It must be questioned whether the information assumed to support the criteria listed in 357D can be assessed effectively. Most applicants would not be in a position to discuss the character, resilience, and values of receiving environment in an 'emergent event', particularly where there are cumulative effects from other TELs that may have been/are in the process of being approved. There is no discussion in the Bill about how multiple applications within a catchment will be considered in order to limit contaminant impacts.

357D requires that the administering authority have regard to the extent and impact of the emergent event, 'including the financial impacts on the applicant if the licence is not granted'. There are no cost or harm measures specified against which to assess the extent and impact of the emergent event. Without such measures, applications will be granted on a subjective basis and this is not satisfactory. AgForce also questions whether DEHP can consider and condition such applications during events where flood gauges and other meteorological data is often not working or non-existent.

The Bill seeks to include consideration of the economic impact of a failure to release water on mine operators – in a similar vein AgForce would request that such an economic impact test be applied to other stakeholders in the event of the release of contaminants. As a TEL will override the conditions of an environmental authority or development approval it is vital that the process by which these are examined and accepted by the Government is robust and provides sufficient protection of the health, well-being and livelihoods of other stakeholders in a catchment. It is difficult to see how an assessment of this impact can be undertaken effectively within 24 hours.

There is a need to clarify what 357D (h) 'public interest' refers to as inclusion of this criteria without further explanation is open to interpretation and provides no assurance for potentially affected community and agricultural stakeholders.

⁹ Page 363 of Chapter 13

Temporary Emissions Licence – Clause 357G

In addition to the listed information, a TEL must state the boundaries within which concentrations of the contaminants being released into the environment should fall within to minimise impacts. This is feasible where TEL specifies the rate of flow and amount of discharge conditions and is necessary to ensure that 357G (d) ‘conditions to monitor the releases to ensure that the expected impact of the releases on the receiving environment is not exceeded’ is a meaningful requirement.

The Queensland Government should make public the procedural guide by which Departmental officers decide to grant a TEL, as in Recommendation 13.13 of the Floods Commission Inquiry report, and in granting any emergency direction, as in Recommendation 13.15 of the Floods Commission Inquiry report.

Failure to comply with conditions of licence – Clause 357I

A penalty of less than \$200,000, in comparison with the environmental harm that could potentially be incurred and the economic gains to be realised by the rapid removal of contaminants in mine pits, would seem to be an insufficient disincentive.

Amendment, Cancellation or Suspension of Temporary Emissions Licence – Clause 357J

Inclusion of the following justification of this clause in the explanatory memoranda does not inspire confidence: *Since the licence must be granted within 24 hours, and is likely to be granted on limited information, the department must be able to suspend, cancel or amend the licence if, for example, downstream drinking water is adversely affected by the release to the extent that it impinges on the health of the downstream community.*

The *Environmental Protection Act 1994* is based on the principles of Ecologically Sustainable Development – why have these been apparently discarded here where the health of the downstream community is potentially at stake? This is unacceptable. TEL approvals must be based on a conservative approach that minimises the risks to the health and socio-economic wellbeing of other stakeholders in a catchment. In so doing decisions must be based on the situation where potentially all mines in a catchment could seek TEL and so condition the first TEL approved on that basis, given the statement that ‘all operators should not be prevented from receiving the ‘same ability’ to discharge into the catchment’.

What is an Emergency – Clause 466B

Without seeing additional detail and the criteria about what constitutes an emergency under s466B AgForce finds the current wording severely lacking in detail. Accompanying procedures need to include objective measures about what constitutes ‘human health or safety’ and ‘serious or material environmental harm’.

The Queensland Resource Council has indicated that the emergency directions power should be interpreted to see the environment as including economic and social conditions. AgForce agrees that this involves a more detailed balancing of the economic interests of the mine operators, and those of the surrounding community, including primary producers. Should mine operators economic interests be defined as an ‘emergency’ then likewise should the protection of the economic interests of primary producers and others potentially affected by a discharge of contaminants be prioritised as an ‘emergency’ situation and afforded similar consideration.

Conclusions

AgForce is concerned that the proposed Bill if implemented as worded will increase the risk that primary producers will face significant negative environmental impacts flowing from poorly managed discharges of mine contaminants including salts, metals and sediments. AgForce is adamant that in responding to one emergency event we do not create another emergency for other stakeholders in the catchment of the affected mine or mines. This submission has raised a range of concerns that should be addressed in reviewing the Bill. Until these concerns are addressed AgForce Queensland cannot support the Bill as currently worded.

If you have any further questions about the contents of this submission, please contact Ms Lauren Hewitt, General Manager Policy, or Dr Dale Miller, Senior Policy Advisor, on (07) 32363100.

Yours sincerely

**Charles Burke**

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AgForce Queensland