

Australian Capital Territory

Environment Protection (NSW Environment Protection Authority Officers) Delegation 2014 (No 1)

Notifiable Instrument NI2014 - 273

made under the

Environment Protection Act 1997, s 13 (Delegation by Authority)

1 Name of instrument

This instrument is the Environment Protection (NSW Environment Protection Authority Officers) Delegation 2014 (No 1)

2 Commencement

This instrument commences on the day it is signed by the Authority.

3 Delegation to NSW Authorised Officers

I delegate to the people named in column 2 of the Schedule 1 my functions under section 13(b) for the purpose of the ACT & NSW Cross Border Protocol at Schedule 2

Christopher Thomas Collier
Environment Protection Authority

10 June 2014

Schedule 1

**Column 1
Position Title**

**Column 2
Officer Name**

NSW Environment Protection Officer

Tristan Johnston
Matthew Rizzuto
Sandie Jones
Sharon Peters
Stefan Press
Nigel Sargent
Janine Goodwin
Julian Thompson
Michael Heinze

**PROTOCOL FOR CROSS BORDER OPERATIONS- AUSTRALIAN
CAPITAL TERRITORY AND NEW SOUTH WALES**

Between

**AUSTRALIAN CAPITAL TERRITORY
ENVIRONMENT PROTECTION AUTHORITY**

and

**NEW SOUTH WALES
ENVIRONMENT PROTECTION AUTHORITY**

1 PURPOSE

To make arrangements to enable authorised environment protection officers from the Australian Capital Territory (ACT) and State of New South Wales (NSW) to act across the State border in appropriate circumstances.

These arrangements are made under the 'Australian Capital Territory and New South Wales Memorandum of Understanding for Regional Collaboration' as entered into by ACT Government and NSW Government in December 2011.

2 DEFINITIONS

"cross border operations" means operations by a cross border officer in the home State;

"cross border State" means the State across the border from the home State;

"cross border officer" means an EPA officer of the cross border State;

"EPA" means the Environment Protection Authority

"emergency response cross border officer (ERCBO)" means an officer appointed as an authorised officer of the EPA in their home State and cross border State, an employee of the State, and trained to respond to emergency events;

"home officer" means an EPA officer of the home State;

"home State" means the State in which action needs to be taken;

"MoU" means the Australian Capital Territory and New South Wales Memorandum of Understanding for Regional Collaboration;

"Officer" means an officer appointed as an authorised officer of the EPA and an employee of the State.

"State" in this protocol means the Commonwealth Territory of the Australian Capital Territory or the State of New South Wales.

3 WHEN CROSS BORDER OPERATIONS MAY OCCUR

- 3.1. **Emergencies** - Cross border operations may occur in the event of an emergency or environmentally urgent situation within a home State. Operations may occur where the home State has requested assistance from the cross border State or where the cross border State can respond to an incident with an ERCBO, before the home State.
- 3.2 **Non-emergencies** - Cross border discussion, and if agreed, eventual operations may also occur where either State is concerned about the effects or potential effects of an activity, discharge, emission or situation in the other State, or where a trans-border activity is of regulatory interest to both States. Relevant issues for discussion may include works approvals, licences/permits, land management, water quality and stormwater management, waste transport, motor vehicles and complaints. Discussions may involve outside agencies. Non-emergency operations may include training and planned exercises. Cross border discussion between States should occur at agreed times and locations.

4 ROLE OF CROSS BORDER OFFICERS

4.1 Emergencies

Emergency response cross border officer (ERCBO) must be an employee who is trained and approved as an emergency response officer by the EPA. The request for attendance of an ERCBO at an emergency situation in a home State must be made by the home State EPA. The role of emergency response cross border officers includes:

- 4.1.1. **Attend and inspect** - At the request of the home State, ERCBO may attend home State emergencies. This may be done by an ERCBO, without a home State officer, if there is agreement that the ERCBO may act alone.
- 4.1.2. **Direct clean-up in emergencies**- If attendance at an emergency is agreed with the home State and if a home officer is not present, an ERCBO may give directions for initial clean up and control, and exercise other powers prior to the arrival of the home officer, except where a home officer restricts that power. The ERCBO should be aware of the limits of power to act in the home State and only act within those limits. The ERCBO will cease to act upon the arrival of a home officer except when otherwise requested to further assist the home officer.
- 4.1.3. **Advise emergency services** - ERCBO's should provide verbal advice to the home State emergency

services and home State EPA on the environmental effects of an incident and any implications of abatement measures at the time of an incident.

- 4.1.4. Collect evidence** - If a home State officer is not yet present and any pollution event has been adequately controlled, the ERCBO may commence to collect evidence (keep records, take samples, photographs, Statements etc) for possible legal proceedings in accordance with the laws of the home State. The ERCBO should brief the home officer upon arrival. ERCBO's should also be available to appear in court, and attend debriefs as required.
- 4.1.5. Keep records-** ERCBO's should keep a log of the nature and extent of any emergency response cross border operations to facilitate agency debriefs and the periodic review of this protocol.
- 4.2. Non-emergencies**
Cross border officers may exercise powers for non-emergencies. Action may be undertaken by any officer authorised within the State in which they are employed, and in the cross border State. The role of cross border officers in non-emergencies includes:
- 4.2.1. Assist** - Cross border officers will endeavour to assist a home officer in the home State when requested. Such assistance will only be within the limits of power in the home State and within the scope of the assistance requested.
- 4.2.2. Attend and inspect** - At the request of the cross border State, cross border officers may attend a home State premises and undertake actions agreed to by the home State. This may be done by a cross border officer, without a home State officer, if there is agreement that the cross border officer may act alone.
- 4.2.3. Collect evidence** - With agreement of the home State, the cross border officer may commence to collect evidence (keep records, take samples, photographs, Statements etc.) for possible legal proceedings in accordance with the laws of the home State. The cross border officer should brief the home officer upon arrival. Cross border officers should also be available to appear in court.
- 4.2.4. Advise home officers** - Cross borders officers should advise home officers of any environmental concerns relating to either or both States.

- 4.2.5. *Keep records*** - Cross border officers should keep a log of the nature and extent of any cross border operations to facilitate agency debriefs and the periodic review of this protocol.

5 CONFIDENTIAL INFORMATION

- 5.1 The Parties will treat as confidential all Confidential Information provided by a Party to the other Party in performance of this protocol and will not disclose or make public any such Confidential Information except with the prior written approval of the other.
- 5.2 In the event that a Party is required to disclose Confidential Information of the other Party by the operation of any law or any regulation having the force of law, the recipient shall immediately advise the disclosing party of the requirement of disclosure and provide full details concerning that requirement so that the disclosing party shall have the opportunity of considering its rights in respect of the forced disclosure and take action as it deems appropriate.

6 DISPUTES

- 6.1 Where there is a dispute between a home officer and cross border officer, the home State operations supervisor shall resolve the matter.
- 6.2 Should the above not be able to resolve the matter to the satisfaction of both parties, then the matter shall be referred to the Director of the home State EPA.

7 HOME STATE LIABILITY

- 7.1 The home State is responsible for the cross border actions of an authorised cross border officer or ERCBO acting on official duty, in good faith and in accord with this protocol.
- 7.2. Subject to an agreement to the contrary, the home State bears all reasonable expenses and liabilities other than wages and salaries incurred in cross border operations pursuant to this protocol. Upon request, the home State will reimburse the cross border State for such reasonable expenses. Cross border officers and ERCBO's are not approved to contract services for actions in the home State unless approved by a home State officer.

8 AUTHORISATION/TRAINING

- 8.1 Each State shall endeavour to train, authorise and maintain the currency of the training, sufficient experienced officers to be able to effect the cross border response when called upon.
- 8.2 Cross border officers must be authorised and trained to act in their home State regarding the relevant subject matter or medium.
- 8.3 Home States and cross border States must keep a record of officers authorised as cross border officers, and ERCBO's must inform the other State of changes in the record in a timely manner.
- 8.4 Intending ERCBO's must satisfactorily complete any joint training course/workshop developed between the respective States.
- 8.5 ERCBO's should attend refresher training courses annually, if possible, but in any event must attend at least triennially. Where possible, cross border officers should also undertake the training.
- 8.6 Home States will issue cross border officers and ERCBO's with photographic authorisations to act as cross border officers and/or ERCBO's once they have satisfactorily completed approved courses and training specified within the Cross Border Operations Procedures Manual.

9 CROSS BORDER OPERATIONS SUPERVISING OFFICERS AND CONTACTS

- 9.1 The EPA's of both States will appoint and keep appointed a suitable officer to supervise the implementation and review of this protocol. The positions appointed upon the signing of this protocol are Manager South East Region (NSW) and Senior Manager, Environment Protection and Water Regulation (Australian Capital Territory).
- 9.2 A list of contact personnel from each party for this purpose of administrative matters relating to this protocol is provided at Appendix 1. This list is to be updated as necessary.
- 9.3 The Parties will ensure that contact details for their respective Representatives are kept up to date.

10 FIRST MINISTERS DEPARTMENT TO BE KEPT INFORMED

- 10.1. The EPA's of both States will endeavour to keep their respective Ministers advised of this protocol and of arrangements pursuant to it.
- 10.2. Details of the cross border protocol amendments, training, incidents and issues arising shall be provided to the respective agencies responsible for the MoU at an agreed frequency

11 PERIODIC REVIEW

- 11.1. Operational procedures and guides relevant to this protocol will be periodically reviewed at training or refresher workshops or when otherwise convenient

12 AMENDMENT

- 12.1. This protocol may be amended by written agreement of the Chief Executive Officers of the respective EPA's or the agencies or person performing the functions of the EPA.

13 JOINT CROSS BORDER OPERATIONS PROCEDURES MANUAL

- 13.1 The EPA's of both States will develop, maintain and disseminate amongst officers as appropriate, an up-to-date joint cross border operations procedures manual.
- 13.2. Without limiting the discretion of the supervising officers to determine the content, the manual may include such matters as:
 - A copy of this protocol as amended from time to time;
 - A copy of the Fish Kill Protocols applicable to each State
 - Any relevant enforcement policies or prosecution guidelines of the respective EPA's;
 - Details of the supervising officers;
 - Details of all cross border officers and ERCBO's, including the extent of their authorisation;
 - Procedures for advising respective Ministers and agencies responsible for the MoU;
 - Form for log of cross border operations;
 - Regional EPA communications directory and procedure guides; a
 - Records of any other arrangements or procedures for handling particular problems.
 - Relevant authority who has the function to approve cross border operations.

DATED THIS

DAY OF

2012



Digitally signed by Barry Buffier
DN: cn=Barry Buffier, o=NSW
Environment Protection
Authority, ou,
email=barry.buffier@epa.nsw.gov
.au, c=AU
Date: 2012.09.12 17:11:34 +10'00'

BARRY BUFFIER
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
NSW ENVIRONMENT PROTECTION AUTHORITY



DANIEL WALTERS
ACT ENVIRONMENT PROTECTION AUTHORITY
ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE
(AUSTRALIAN CAPITAL TERRITORY)

APPENDIX 1: PARTY REPRESENTATIVES

The ACT Environment Protection Authority

Name	Position	Phone	Fax / Email
Environment Protection Authority	Senior Manager, Environment Protection	6207 6334	Environment.Protection@act.gov.au

NSW Environment Protection Authority

Name	Position	Phone	Fax / Email
Environment Protection Authority	Manager, South East Region	6229 7002	queanbeyan@epa.nsw.gov.au
