



# Dealing with an EPA site inspection

## Waste Industry Circular for WCRA Members

### 25 May 2020

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#### Prepared for the Members of the Waste Contractors & Recyclers Association of NSW

Last year the NSW EPA issued internal guidance to its staff in an attempt to establish and maintain positive a relationship between its officers and the staff of waste facilities during onsite inspections. In response, WCRA has agreed to confirm its Members' commitment to act in a courteous and professional manner during site inspections.

We have set out below the EPA's commitment and WCRA's response. We have also set out additional steps we recommend you take when dealing with a site inspection from the EPA.

#### What has the EPA committed to the waste industry for future onsite inspections?

The EPA has committed that its officers will:

- Always turn up to any site with the appropriate PPE for the site.
- Always announce themselves and the reason for their visit to either the weighbridge and/or site manager.
- Regardless of whether Authorised Officer powers permit the officer to enter the site without it, consider the work health and safety risks of the site and if requested complete a site induction.
- Follow all safety directions when on a site.
- Be professional at all times and treat all site staff with respect.
- If requested, advise the site staff the powers of enter the officer is exercising and the things they can do during the inspection in a professional manner.
- At the end of each inspection ask the licensee/ licensee representative if they have any issues with how the inspection has been conducted.

## **What can Members do to assist in these site inspections whilst protecting their rights?**

- Be professional at all times and treat EPA staff with respect.
- Always direct EPA staff to the site representative and/or manager.
- Always ask the EPA staff to display their accreditation.
- Always conduct site inductions and advise EPA staff of the site's work health and safety risks.
- Notify EPA staff of the site's safety requirements and offer basic PPE, such as a high VIZ vest, safety glasses, hard hats and ear plugs.
- Ensure a site representative or manager accompanies the EPA officers during the inspection.
- Do not speculate on the cause of any issues.
- Make notes of any issues identified during the inspection, keep a register of the matters raised and follow up on rectifying any issue as soon as possible.
- Take photographs of, and record the location and sample numbers of any samples taken by the EPA during the inspection.
- If in relation to a compliance matter, do not agree to participate in a record of interview without first obtaining legal advice.
- Ask for feedback about the inspection and if there are any areas for improvement.
- Ask questions if you are unsure of any requirements or the statutory basis of any request from the EPA.

## **What may happen if a staff member tries to delay or obstruct an EPA inspection?**

EPA officers have been advised if they believe that the work health and safety induction or other safety instructions are being used as a delaying tactic or obstruction, the officers will advise the licensee/ licensee representative of that belief and provide the warnings of the potential consequences regarding obstruction under the Protection of the Environment Operations Act 1997 and contact the relevant Waste Compliance Director.

If this occurs, the EPA will advise a licensee in writing if it believes the conduct of a licensee or its representatives have acted unprofessionally or made any real or implied threats to an EPA Officer.

Penalties for obstructing an EPA officer are significant, with a maximum penalty of \$1 million in the case of a corporation and \$250,000 for an individual. Daily penalties also apply for continuing offences.

### **What can you do if they think an EPA Officer has acted unprofessionally?**

If a licensee believes an EPA Officer has acted unprofessionally, WCRA members should make a complaint in writing to the EPA's Chief Executive and WCRA's Executive Director. A confidential complaint may be made. The EPA maintains that it takes allegations of unprofessional conduct by an EPA officer seriously.

### **What can you do if you are concerned about potential legal liability during the inspection?**

It is critically important that if you become aware of an EPA inspection and you have a concern about potential legal liability that you get legal advice **before** the inspection (even if over the phone). This is because many directors and managers may be held personally liable for any environmental offences of the company. Further, penalties for the most serious environmental offences are \$5 million for a corporation and \$1 million and/or 7 years imprisonment for an individual.

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Please note that this is general advice only. We recommend that Members seek specific legal advice in relation to their particular situation. If you require further information or advice, please contact:

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