

BUSINESS HUNTER

29 November 2022

Better Regulation Division
Customer Service NSW

Dear Sir/Madam

RE: Ammonium Nitrate Storage in NSW – Discussion paper

Introduction

Business Hunter notes the release of and wishes to comment on the Discussion Paper *Separation Distances for Solid Ammonium Nitrate in NSW October 2022* (the Paper) published by the Better Regulation Division of the Department of Customer Service.

As the peak business organisation for the Hunter region, Business Hunter is the voice of Australia's largest regional economy, with a membership group spanning more than 4,200 businesses across ten local government areas. We represent the perspectives of member and affiliate businesses across all sectors and all sizes of business, including those that have an interest in the provisions of the Paper.

In this context, Business Hunter would like to make reference to a number of high level matters that are concerned with the Paper. It is likely individual submissions from specific industry or businesses will pick up technical detail and we also suspect overarching concerns on similar themes and on this basis, we trust our submission will add to that voice.

Business Hunter notes the overarching intention of the Paper is to facilitate “*the NSW Government reviewing its policies on the storage of ammonium nitrate to ensure they meet global best practice to manage the associated risks*” and “*raise safety standards for ammonium nitrate facilities to a best practice standard already used in other Australian jurisdictions*”. Given the impact changes to regulation in this realm will have on existing industry and business, it is vitally important any change is done in a measured and considered way and not fall into a trap of proposing and making substantial and sudden changes that have a significant impact on the viability of existing businesses as well as their investment plans into the future.

Commentary

Through the process of consultation with members, we note that there was very little or no prior consultation with impacted business in relation to the Paper. This is of concern given the relative significance of businesses impacted in the Hunter region, noting the prominence of the handling of ammonium nitrate owing to the presence of a manufacturer and a number of businesses that break bulk the material and others than use it in their day to day operations. Consultation is the cornerstone of good policy-making, and we need to make sure businesses directly and indirectly impacted have a full and transparent opportunity to contribute to the process to devise and formulate any new regulation.

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We also note from the Paper, the intention is to mandate the change and to apply it to existing operations retrospectively. In this scenario, the regulation will impact businesses that have been operating in good faith under the provisions of existing safety regulation and standards. It is not apparent from the Paper where these standards have been deficient or the businesses operating in accordance with them, non-compliant or in a position where the broader community has been put at risk. The Paper is suggesting fundamental changes to local industry practises where, as far as we are aware, there have not been serious breaches to warrant change of this scale and nature. Governments rightly avoid applying rule changes retrospectively because it undermines business and investment confidence and will do so in this instance.

The Paper appears to be adopting a consequence based approach based on a worse case scenario in proposing possible amendments. Under the circumstances and the understanding of the record of practise in the industry in NSW, we would assert a risk-based approach that has regard to existing standards in practise to be more relevant.

Business Hunter understands the Orica plant at Kooragang Island is NSW's only domestic manufacturer of ammonium nitrate, accounting for about 70% of the state's supply and also accounting for about 70% of the supply required by NSW mines. It fills a critical role in supplying the mining, construction and agriculture industries and has a standing in the global operations for Orica. The NSW government recently invested \$13m in helping Orica to decarbonise its ammonium nitrate production on Kooragang Island. The policy in the Paper undermines that investment in that if implemented, the new regulation could put the Orica operation at risk.

There are also intermediate ammonium nitrate storage facilities that operate in the region and are required to ensure just-in-time delivery and continuity of supply to miners in the Hunter region and beyond. Currently these facilities are fed from a mix of locally manufactured material and imported material sourced from interstate and overseas. If the Orica facilities are forced to close or scale down, the industry will be forced to move to a fully imported model. This would result in considerable scale up of shipments, unloading and temporary store of ammonium nitrate and a massive increase in heavy haulage of product to mine sites, all of whom would have to increase their storage capacity. The additional consequences of this action are also a loss of support for local industry and rather, bolstering the jobs of business and people interstate and overseas, at the expense of local business.

Furthermore, the provisions in the Paper undermine the shared ambition in the region for realizing a hydrogen hub for Newcastle. A brownfield site like Orica's is one of our best chances for realizing a hydrogen hub and for securing future-facing jobs for Newcastle in the new energy economy that will power the region, the state and the nation.

In summary, we are concerned the Paper outlines measures that regardless of the staging and timing of implementation, will have a significant and major impact on exiting operations in the ammonium nitrate industry forcing business closures if implemented. It is not immediately clear what safety problem the Paper and the potential changes are meant to be solving. The Discussion Paper doesn't point to any failings in the current system and multiple controls that have operated for over 50 years without a major ammonium nitrate incident. The Paper applies a simple, worse-

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case scenario and a one-size-fits-all approach and for no safety dividend that is immediately apparent or warranted.

We appreciate the opportunity to provide this submission and would be willing to expand on any of the matters raised if required.

Yours sincerely



Bob Hawes
CEO
Business Hunter