

ENFORCEABLE UNDERTAKING

National Greenhouse and Energy Reporting Act 2007

Section 45

Undertaking given to the Clean Energy Regulator under section 45 of the *National Greenhouse and Energy Reporting Act 2007*.

by

ORICA LIMITED

ACN 004 145 868

Glossary

1. In this Undertaking, unless the contrary intention appears, the following definitions apply:

"Act" means the *National Greenhouse and Energy Reporting Act 2007*

"NGER Measurement Determination" means the *National Greenhouse Energy Reporting (Measurement) Determination 2008*

"person" has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* and includes a corporation registered under section 17 of the Act

"Regulations" means the *National Greenhouse and Energy Reporting Regulations 2008*

"Regulator" means the Clean Energy Regulator

"Report" means a report submitted to the Regulator pursuant to section 19 of the Act

"Schedule of Technical Works" means the schedule submitted to the Regulator pursuant to clause 14(a) of this Undertaking

"Undertaking" means this enforceable undertaking.

Person giving Undertaking

2. This Undertaking is given to the Regulator by Orica Limited for the purposes of section 45(1)(c)(ii) of the Act.

Background

3. Orica Limited, Australian Company Number 004 145 868, is a corporation registered under section 17 of the Act.
4. In accordance with section 19 of the Act, a registered corporation must submit a compliant Report for each reporting year to the Regulator by 31 October following the end of the reporting year.
5. A Report is required to report greenhouse gas emissions, energy production and energy consumption from the operation of facilities under the operational control of a

registered corporation and entities that are members of a corporation's group, based on methods set out in the NGER Measurement Determination.

Reporting of emissions by Orica Limited

6. Orica Limited submitted Reports to the Regulator for the four reporting years from the reporting year beginning on 1 July 2008 to the reporting year ending on 30 June 2012.
7. On 9 March 2012, Orica Limited was informed by the Regulator that it had been selected for an audit in accordance with section 74 of the Act. An audit was conducted in June and July 2012 in relation to Orica Limited's Report for the 2010/2011 reporting year. With respect to nitrous oxide emissions from nitric acid plants at two facilities operated by Orica Limited, the audit identified that there was not sufficient appropriate audit evidence to demonstrate compliance with the reporting methodology adopted by Orica Limited in its 2010/11 Report. Measurements of flow and concentration, which formed the basis of reporting, were non-compliant with the NGER Measurement Determination. Accordingly, Orica Limited's Report for 2010/2011 was not compliant with section 19 of the Act.
8. The non-compliance identified in respect of Orica Limited's 2010/2011 report may apply to all other Reports submitted by Orica to date.
9. At the date of this Undertaking, Orica Limited has undertaken technical works in the 2012/2013 reporting year in order to comply with the Act, Regulations and NGER Measurement Determination.
10. Orica Limited acknowledges that until the technical works the subject of this Undertaking are completed, it may not be able to submit a Report compliant with the Act, Regulations and NGER Measurement Determination.

Acknowledgement

11. Without any admission as to liability, Orica Limited acknowledges that its Report under the Act for the 2010/2011 reporting year in relation to nitrous oxide emissions from nitric acid plants at two facilities that it operates was not compliant with the NGER Measurement Determination and therefore was not compliant with section 19 of the Act. Orica Limited also acknowledges that the non-compliance identified in respect of the 2010/2011 reporting year may apply to all other Reports submitted by Orica Limited to date.
12. Orica Limited acknowledges that the Regulator is concerned that one or more Reports provided by the corporation were not compliant with the requirements of the NGER Measurement Determination, and therefore section 19 of the Act, and that corrective action is required to seek to ensure that Orica Limited is compliant with the Act, Regulations and NGER Measurement Determination in the future.

Undertaking

13. Under section 45 (1) (c) (ii) of the Act, the Regulator may accept a written Undertaking given by a person that the person will take specified action directed towards ensuring that the person is unlikely to commit a contravention of the Act or the Regulations in the future.
14. In respect of nitrous oxide emissions from nitric acid plants at the two facilities where the audit undertaken under section 74 of the Act found non-compliance in relation to Orica Limited's Report for the 2010/2011 reporting year, for the purposes of taking

action directed towards ensuring that Orica Limited is unlikely to commit a contravention of the Act, Regulations and NGER Measurement Determination in the future, Orica Limited hereby undertakes:

- (a) within 2 weeks of this Undertaking coming into effect, to prepare and submit to the Regulator a Schedule of Technical Works outlining the verification works to be commissioned to ensure that flow meters and concentration monitoring equipment enable Orica Limited to report in compliance with the Act, Regulations and NGER Measurement Determination;
- (b) to use its best endeavours to complete the items in the Schedule of Technical Works in accordance with the time frames in the Schedule of Technical Works;
- (c) to provide to the Regulator a monthly written performance report on progress against the Schedule of Technical Works each month from the date of provision of the Schedule of Technical Works until completion of the Schedule of Technical Works;
- (d) to provide to the Regulator an interim written report if the proposed dates for technical works set out in the Schedule of Technical Works are not achieved, with written reasons for any delay;
- (e) no later than 21 days from completion of all items in the Schedule of Technical Works, to prepare and submit to the auditor at clause 14(f) a written report that outlines the works undertaken and provides evidence that Orica Limited has resolved the technical issues with regard to measurements of flow and concentration that previously prevented Orica Limited from reporting in compliance with the Act, Regulations and NGER Measurement Determination;
- (f) to appoint a Category 2 or 3 registered greenhouse and energy auditor approved by the Regulator to provide a reasonable assurance opinion under ASAE 3100 *Compliance Engagements* on the written report at clause 14(e) within 28 days of receipt of that written report by the auditor. The opinion should state that:

"In respect of nitrous oxide emissions from nitric acid plants at the two facilities where the audit undertaken under section 74 of the Act found non-compliance in relation to Orica's Report for the 2010/2011 reporting year, in the opinion of the auditor, the works undertaken by Orica Limited, as described in the written report, supports the assertion that, in all material respects, as at [the date of the written report], Orica Limited has resolved the technical issues with regard to measurements of flow and concentration that previously prevented Orica Limited from reporting in compliance with the Act, Regulations and NGER Measurement Determination.";

- (g) to provide a copy of the reasonable assurance opinion at clause 14(f) to the Regulator as soon as reasonably practicable after receipt.

15. Orica Limited undertakes to pay all costs associated with its compliance with this Undertaking.

Duration of the Undertaking

16. This Undertaking comes into effect when

- (a) the Undertaking is executed by Orica Limited; and
 - (b) the Regulator accepts the Undertaking so executed.
17. This Undertaking ceases to have effect once the requirements of clause 14 above have been completed.

Executed by

Orica Limited ACN 004 145 868 by its authorised officer pursuant to s. 127(1) of the *Corporations Act 2001*.

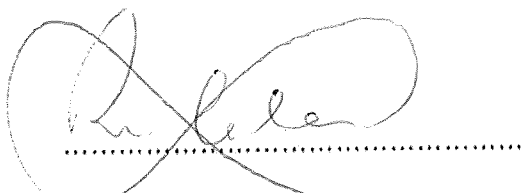


A. Losh / Noel Meehan

Secretary/Director

This 28th day of March 2013

ACCEPTED BY THE REGULATOR PURSUANT TO SECTION 45 (i)(c)(ii) OF THE NATIONAL GREENHOUSE AND ENERGY REPORTING ACT 2007.



Ross Carter
Executive General Manager
Regulatory Division

Delegate of the Regulator

This 2nd day of April 2013