CEMENT CONCRETE & AGGREGATES AUSTRALIA

22 December 2016

LBL Review
Regulatory Reform and Advice Branch
Environmental Protection Authority
PO Box A290
Sydney South NSW 1232

Email: LBL.Review@epa.nsw.gov.au

Dear Sir/Madam,

SUBMISSION: REVIEW OF THE LOAD-BASED LICENSING SCHEME

Cement Concrete & Aggregates Australia (CCAA) thanks the NSW Environment Protection Authority (EPA) for inviting our comment on the *Review of the Load-based Licensing (LBL) Scheme: Issues Paper.*

INTRODUCTION

CCAA is the peak industry body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries.

CCAA members account for approximately 90% of the $7 billion in revenues generated by the heavy construction materials industry, which employs 18,000 Australians directly and a further 80,000 indirectly.

Our members operate hard rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants throughout New South Wales. Approximately, 45 million tonnes of construction materials are extracted in NSW each year for use in pre-mixed concrete and other construction processes, such as road base and pavements.

Heavy construction materials are vital to Australia's $172 billion building and construction industry and most importantly, essential to the NSW government's once in a generation infrastructure boom currently underway. The reliable and cost-effective supply of heavy construction materials to the NSW market is fundamental to sustainable growth of the NSW economy.

CCAA supports sensible environmental regulation that takes into account the vital role of heavy construction materials in building NSW and the communities we live and work in.

There are numerous inferences throughout the Issues Paper to suggest that the EPA is focused towards broadening out LBL to other industries while also raising its fees. CCAA is very concerned by this given the inability of the EPA to provide conclusive evidence through the Issues Paper that LBL results in tangible environmental outcomes.

There is also little consideration of the implication on affected industries of the proposals outlined in the Issues Paper. CCAA is particularly concerned about suggestions made to broaden the scheme to sources of fugitive dust given the difficulties for reliably estimating this form of air emissions.

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LOAD-BASED LICENSING AS A REGULATORY TOOL

CCAA members do not consider load-based licencing pollution tax to directly reduce environmental harm inflicted by related licenced activities. The efficient and affordable supply of extractive materials means that quarries must be located within close proximity to the communities they serve. Such strategic positioning ensures that corporate social responsibility and community buy-in are the predominant incentives that drive improvements in environmental management within the industry.

This view is supported by the 2014 EPA survey of LBL Licensees in which only 40% of respondents agreed that LBL provided an incentive to reduce emissions, with other major drivers identified as being good corporate citizen and general maintenance/upgrades at site.

It is more likely, in our view, that the costs of LBL will simply be passed downstream to the market, rather than result in any environmental benefit. With heavy construction materials estimated to account for 32% of the costs of infrastructure projects[1], any broadening of the scheme out to our industry will detrimentally impact the affordable supply of materials required to meet the increasing infrastructure needs of NSW.

With no comparative schemes in other States, LBL also impacts on the competitiveness and commercial viability of industries operating in NSW and disincentivises investment by current and new operators.

CCAA is also concerned about the premise of LBL as an "economic incentive for licensees to improve their environmental performance beyond the levels required by regulations or licence conditions alone."[2] CCAA members do not consider it is reasonable for the regulator to penalise an operation for emissions or discharges that comply with acceptable environmental limits prescribed and licensed by the EPA.

For these reasons, CCAA considers other regulatory tools used by the EPA, such as licencing, conditions, and targeted pollution reduction programs, to be fairer and more effective mechanisms for managing environmental harm.

CCAA questions the continued use of LBL given the lack of evidence of any real environmental outcomes (discussed further below). If LBL is to continue as a regulatory tool, CCAA considers that it should only be used in limited circumstances where other regulatory and licensing mechanisms prove insufficient in achieving desired "environmental outcomes."

LBL currently targets key air and water pollutants, yet there is little discussion in the Issues Paper as to how these pollutants came to be identified within the scheme, nor are there performance indicators attached to these pollutants.

The current vagueness of the EPA's desired "environmental outcomes" for NSW, provide an inadequate policy platform for determining what priority pollutants, critical zones or schedule activities are best targeted through LBL. CCAA considers that this policy gap must be addressed before any changes to LBL are pursued.

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[1] Macromonitors, June 2013, *The Impact of Heavy Construction Materials Prices on Infrastructure Costs in Victoria.*

[2] NSW Environmental Protection Authority, October 2016, Review of Load-Based Licensing Scheme: Issues Paper, http://www.epa.nsw.gov.au/resources/licensing/lbl/load-based-licensing-review-issues-paper-150397.pdf, p. viii.

LACK OF RATIONALE PROVIDED FOR BROADENING THE SCHEME

CCAA is alarmed that the principal question of whether LBL has proven to be effective remains unanswered, yet the EPA's intent is remains focused towards expanding LBL to increase its revenue. On this matter, the Issues Paper concludes that "it is not possible to be definitive about the contribution LBL has made to achieving environmental improvements."[3]

Simply put, without adequate evidence of the benefits LBL, the scheme is perceived as an inequitable and unreasonable revenue raising exercise.

The assessment in the Issues Paper of the scheme to date, namely its simplistic analysis of pollutant trend data, is limited in that it overlooks a number of factors. For example, the link made between declining pollutant trends across LBL licensees overlooks the fact that there has been a marked shift in NSW manufacturing industries since 1999, with a number of closures of LBL facilities contributing to the decline in pollutant trends.

There is also too heavy of a reliance on National Pollutant Inventory (NPI) data without any comparative analysis against other data sources. CCAA members report that while NPI data can be a useful indicator, it has limitations. This is because it relies solely on estimation techniques that make broad brush assumptions. These assumptions do not effectively account for site by site variations, resulting in overestimates of emissions to account for uncertainties.

The EPA must demonstrate that the environmental benefits able to be derived from LBL provide sufficient justification for continuation and expansion of the scheme. This regulatory best practice is supported by the NSW State of the Environment Report 2015 which states:

> *All environmental regulations in NSW undergo a cost–benefit analysis to ensure the regulatory options adopted deliver the greatest net benefits to society. This is a legislative requirement (Subordinate Legislation Act 1989) that requires NSW agencies to develop regulations and environmental standards that have well-defined objectives and that consider the compliance and administration costs to industry and government along with the economic and environmental benefits to the broader community.*[4]

Given the current impost of LBL on industrial activities and the fact that the environmental benefits of the LBL have been unable to be quantified, CCAA argues that there is no justification for broadening the scheme in any form.

HEAVY CONSTRUCTION MATERIALS AND FUGITIVE DUST

The majority of scheduled activities engaged in by CCAA members are currently excluded from the LBL scheme, as shown in Table 1 below.

Table 1: Primary Schedule 1 Activities for which CCAA members are involved

Relevant scheduled activities	Load-based License applies (✓/×)
Cement or lime handling	×
Cement or lime production	✓[5]
Concrete works	×
Crushing, grinding or separating	×
Extractive activities	×
Mining for minerals *(specific to limestone)*	×

[3] NSW Environmental Protection Authority, Review of Load-Based Licensing Scheme: Issues Paper, p. 30.
[4] NSW Environmental Protection Authority, December 2016, *NSW State of the Environment,* http://www.epa.nsw.gov.au/resources/soe/20150817soe-2015.pdf, p. 11.
[5] For six air pollutants – Coarse particulates, fine particulates, lead, mercury, nitrogen oxides and sulfur oxides.

i. Environmental Performance of the Industry

CCAA members are committed to minimising the impact that their operations have on the environment. The industry takes its obligations to the community and environment seriously and therefore invests heavily in this space; not to mention the rigorous planning approval processes and environmental conditions that the industry is required to meet.

From progressive rehabilitation through to dust suppression systems and the use of alternative fuels, there are numerous examples of our industry going above and beyond minimum standards to reduce environmental harm. Many of which are demonstrated through CCAA's NSW Environment Health & Safety Awards. Running for 38 years these awards recognise innovative and best practice solutions adopted by our industry in the areas of the environment and health and safety.

Entries from the 2016 EH&S awards are accessible through CCAA's online galley via the following link https://ccaaehs.awardsplatform.com/gallery/EoOkWzOG?per_page=100

ii. LBL unsuitable for fugitive dust

Fugitive dust by its very definition is difficult to measure as it is derived from a mixture of sources over a large area not contained by a stack of any sort. Fugitive dust is also influenced by external factors such as weather conditions and nearby land uses. This makes it inherently difficult to determine the source of emissions (i.e. can be blown onto the site) and for estimating emissions due to day to day fluctuations.

CCAA also does not agree with the statement made in the Issues Paper that there have been improvements in emissions estimation techniques for diffuse or fugitive dust emissions since LBL was first introduced, nor is this statement supported by any evidence.[6] Furthermore, CCAA understands the opposite to be true. For example, the NPI Emissions Estimation Technique Manual for calculating particulate emissions draws its emissions factors from the US EPA's AP-42 work, which has not materially changed since 1985.[7]

CCAA does not consider it appropriate for sources of fugitive dust emissions to be included within the scheme due to the difficulties in reliably quantifying emissions generated by the licensee.

iii. Dust Mitigation Used by Industry

Best practice dust suppression techniques are employed by CCAA's members at their quarries to eliminate fugitive dust on site so far as is reasonably practicable. A variety of techniques are used in combination to ensure that dust-generating sources on site are able to be addressed. Examples of the kinds of techniques employed include:

- Best practice plant design to minimise dust emissions;
- Enclosing primary sources of dust, such as crushers and conveyors;
- Maintaining critical dust suppression plant and equipment;
- Use of water, mist, or fog (including foam and wax based) sprays to keep dust from escaping primary sources;
- Proactive weather monitoring and targeted response planning;
- Use of water trucks to wet down haul roads;

[6] NSW Environmental Protection Authority, *Review of Load-Based Licensing Scheme: Issues Paper*, p. 41.
[7] US Environmental Protection Authority, *Air Emissions Factors and Quantification*, https://www.epa.gov/air-emissions-factors-and-quantification

- Covering or wetting down stockpiles;
- Washing down transport trucks prior to leaving site and covering loads; and
- Maintenance or sealing of haul roads.

CCAA members are concerned that there are few other methods available to sites, with the exception of capital intensive plant upgrades, to reasonably and feasibly reduce dust emissions. The introduction of the LBL to quarries and other relevant operations[8] will therefore simply result in a tax on industry with little to no environmental outcomes.

FEE SETTING STRUCTURES

It is clear to CCAA that the intention of the LBL Review is focused towards broadening the scope of the scheme while also raising the fees within it, to which CCAA is strongly opposed.

Given the lack of environmental benefits that can be attributed to LBL through the review, the scheme is perceived by industry as merely a revenue raising exercise.

Notwithstanding CCAA's concerns regarding the lack of rationale for the scheme, CCAA does not support those proposals that look to raise load-based fees across the board; including the proposals to increase the Pollutant Fee Unit over CPI as well as the proposal to remove of the administrative/load fee discount. These options are considered to be at odds with the "polluter pays principle" of which LBL is underpinned.

If the scheme continues to operate, CCAA recommends that revenue from LBL be 'ring-fenced' so that it can be used to invest back into improving environmental outcomes for NSW. Preferably this would be in the form of a fund that could be used to fund industry emission reduction projects.

CONCLUSION

To summarise, CCAA and our members remain unconvinced of the benefits of LBL to date. In accordance with regulatory best practice, the EPA must be able to demonstrate that the costs on affected industrial activities of such a scheme are outweighed by the environmental benefits obtained - A matter that has not been convincingly resolved through the Issues Paper.

CCAA therefore recommends that there is insufficient rationale for the broadening of LBL to other activities or pollutants and questions the continuation of the scheme in its entirety, in favour of other regulatory tools currently available to address environmental harm.

Once again CCAA thanks the EPA for the opportunity to comment on the review of LBL. We hope that the EPA will work collaboratively with industry as it considers the next steps in relation to LBL.

Yours sincerely

TODD HACKING
STATE DIRECTOR NSW & SA

[8] For the avoidance of doubt, this is those activities under Schedule 1 of the POEO Act defined as 'Crushing, grinding or separating,' 'Extractive activities' and 'Mining for minerals (specific to limestone).'