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

Submitted via email - LBL.Review@epa.nsw.gov.au

Dear Sir/Madam,

RE: SUBMISSION ON THE NSW EPA – LOAD BASED LICENSING ISSUES PAPER

Please find below a submission from Peabody Energy Australia Pty Ltd (Peabody) on the New South Wales (NSW) Environmental Protection Agency (EPA) Load Based Licensing - Issues Paper (November 2016).

Background

Peabody is the world's largest private-sector coal company with metallurgical and thermal coal customers in more than 25 countries on six continents.

Peabody currently operates from three mine sites in NSW (the Wambo Coal Mine, Wilpinjong Coal Mine and Metropolitan Mine) and is investing in infrastructure for NSW as a founding shareholder with a long-term commitment to the operation of the Newcastle Coal Infrastructure Group (NCIG) Coal Export Terminal at Kooragang Island in Newcastle.

Overview of Comments on the LBL Issues Paper

Peabody operations are subject to an extensive regulatory approval framework that acts to manage and mitigate environmental impacts including emissions. Peabody invests significantly to ensure its operations comply with all environmental regulations and have established extensive monitoring systems to enable management and reporting of its performance.

Management of fugitive dust emissions at Peabody operations are aligned with industry best practice as a result of mitigation controls imposed through mechanisms such as the Pollution Reduction Programs (PRP's) as required by the NSW EPA. This is in addition to meeting specific emission criteria limits imposed by other regulatory controls.

Water emissions from Peabody's operations are either controlled via the "polluter pays" Hunter River Salinity Trading Scheme or restrictive Environmental Protection Licenses (EPL) conditions that are set based on local environmental conditions.

Given these current controls, Peabody believes that any move to include "mining" in a Load Based Licensing (LBL) scheme appears unwarranted based on three key issues:

1. The success for the current LBL scheme and applicability to the mining industry is unclear.
2. The LBL scheme is unsuitable for fugitive dust emissions
3. There is no scientific evidence to support the LBL inclusion of water emissions.

The issues paper does not provide any substantial justification or demonstrate measureable environmental benefit that would be derived as a result of mining being included in a LBL scheme.

1. The success for the current LBL scheme and applicability to the mining industry is unclear

1.1 Success of LBL Scheme

The issues paper details that an objective of the LBL scheme is to "*reduce pollution in a cost effective and timely manner*". The paper also provides air and water emissions trends over an 11 year period 2003-04 – 2013-14. This data and supporting text show that key changes (increases of decreases) are strongly influenced by industrial facility changes and population increases and not the operation of the LBL scheme.

There has been no clear evidence provided in the paper to suggest the current LBL scheme is providing a cost effective mechanism to reduce pollution.

1.2 Applicability to Mining

Based on the Issues Paper promoting the success of the LBL scheme, Peabody is concerned that there is an unjustified focus on including mining related emissions, despite these emissions being regulated through other measures.

As a result of current regulatory measures, Peabody has already implemented numerous controls and changes in operations that limit future abatement opportunities to minimize emissions e.g. Pollution Reduction Programs, modifying operations, acquisition of properties and progressive rehabilitation..

Therefore if the basis of an LBL scheme is to provide an economic incentive to consider and adopt abatement measures that reduce emissions, the mining industry has limited abatement opportunities due to existing best practice controls already in place. On this basis, if there are limited economic abatement opportunities remaining then the LBL scheme effectively becomes an additional administrative financial burden with no tangible environmental outcomes.

Additionally fugitive dust emissions and diffuse water pollution can occur from other non-mining land uses (i.e. agriculture) that are not being considered as part of the LBL scheme. Estimating the contribution from these other sources, whether they be air emissions or landscape runoff creates significant challenges for accurate estimation. Charging a fee based on proportion of these emissions and an impact is therefore impractical.

Recommendation:

We recommend the LBL scheme not include mining activities as the existing regulatory framework for mining is comprehensive and has been demonstrated to effectively deliver environmental improvements and meet environmental outcomes. Rather than being 'complementary' to other regulatory tools, the addition of LBL to the existing regulatory framework for mining risks complicating the it and creating an ineffective, complex and inequitable regime.

2. LBL is unsuitable for fugitive dust emissions

Peabody sites report fugitive dust emissions through the current National Pollutant Inventory (NPI) system. However Peabody does not support the use of NPI for the use in a LBL scheme because it is not representative of any actual environmental impact. This is because:

- The collection of NPI data involves the use of conservative assumptions and methods that result in over estimation of emissions
- Fugitive dust emissions are generated over a wide surface area and influenced by a many variables, including meteorological factors. Therefore it is virtually impossible to determine the quantity of particulate emissions leaving the site boundary, or falling onto properties owned by the mine.

Applying the LBL scheme to fugitive dust emissions and quantifying and assigning a portion contribution to the impact is extremely complex due to the enormous variability in environmental context, population proximity and other non-mining related activities.

Additionally Peabody sites operate in different geographic locations that have different population, topographic and environmental contexts. The Issues Paper does not define the environmental impact based on these changing contexts but rather maintains a very high level analysis. The context of the impact is important when considering contributions made by other industries or land uses. For example:

- Non-mining activities such as agriculture which result in airborne particulate emissions that add to any cumulative impact from PM_{10}
- Mines being located at varying distances from populated areas resulting in differing impacts.

Considering that Peabody sites have already implemented “Dust Stop” Pollution Reduction Programs and are operating at “best practice” it is unclear what “abatement measures” would be encouraged if a LBL scheme was implemented.

Peabody understands that there are no precedents in other jurisdictions for the use of a LBL scheme for mining. This is most likely due to ineffectiveness, complexity, inefficiency and inequity of such a system.

On this basis Peabody does not support the inclusion of mining activities as part of any future revision of the LBL scheme.

Recommendation:

Peabody recommends the LBL scheme not include mining activities as it remains an inappropriate regulatory tool to apply fugitive dust emissions, demonstrated by the lack of any comparable precedent, and is unnecessary given the availability of more suitable regulatory tools.

3. There is no scientific evidence to support the LBL inclusion of water emissions

Peabody advocates for flexible water management systems that can adapt to the climatic extremes. Any regulatory scheme should support this flexibility to prevent inefficient mitigation responses especially for mines that do not have access to the Hunter River Salinity Trading Scheme.

Currently mining operations discharge surplus water off-site, under the provisions of their respective EPLs through either the "polluter pays" Hunter River Salinity Trading Scheme or though strict discharge criteria that have been imposed. Where the HRSTS does not apply, the established discharge criteria are location-specific to ensure the water quality of the receiving waters is protected.

The Issues Paper did not provide any information to justify that these existing regulatory measures are failing or not achieving the water quality objectives.

Additionally, the fundamental basis of a LBL scheme is to provide an economic incentive to consider and adopt abatement measures that reduce emissions. Any LBL scheme needs to be supported by location-specific, scientific data to demonstrate the environmental benefit if any alternate abatement is implemented.

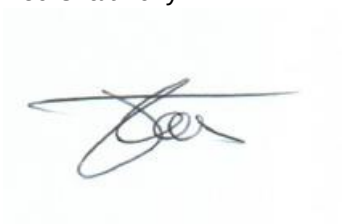
On this basis Peabody does not support the inclusion of mining activities as part of any future revision of the LBL scheme. Any future changes that could not be adequately addressed through PRP's or Environmental Improvement Programs must be supported by clear scientific evidence that water quality objectives are at threat. Additionally the scientific evidence should also consider the impact of non-mining related contributions resulting from other adjacent land uses.

Recommendation:

There is no evidence to suggest a gap in the existing regulatory framework for mine water discharges. The Issues Paper does not present a case for the extension of LBL to mine water discharges. Peabody does not believe the extension of the LBL scheme to include mine water discharges is warranted or addresses the industry need for a flexible water management system for mining operations outside the HRSTS.

Peabody Energy appreciates the opportunity to make a submission on the NSW EPA – Load Based Licensing Issues Paper.

Yours faithfully



Jamie Lees
Director Environment
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