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Review of the Load-based Licensing Scheme – Issues Paper

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Overview

Yancoal is supportive of any initiative which would improve environmental regulation in New South Wales (NSW) by using an evidence-based approach to promote greater efficiency and environmental outcomes.

However, Yancoal believes the Issues Paper released as part of the Environment Protection Authority's (EPA) review of the Load-based Licensing (LBL) scheme does not accord with these objectives.

Several of the policy options explored in the Paper would unnecessarily increase the regulatory burden and associated costs for the mining sector without significantly improving pollution reduction outcomes or the efficiency and operation of the LBL scheme.

Mining companies across the State are already subject to a significant number of regulatory initiatives designed to minimise pollution, particularly in respect of fugitive dust emissions and water discharge. These programs have a proven track record of delivering strong environmental outcomes and have been specially designed to account for the complexity and uniqueness of mining.

Yancoal would be strongly opposed to any proposal to supplement, or replace, these mechanisms by extending the LBL scheme to include mining. Such a move would be inappropriate because:

- There is no strong rationale for applying the scheme to mining;
- It would be overly complex to administer an LBL scheme for mining; and
- There is no evidence that extending the scheme would achieve better environmental outcomes.

No rationale for applying the Scheme to mining

Fugitive dust emissions are already decreasing

The Issues Paper implicitly advocates applying the LBL scheme to mining by suggesting existing programs are not sufficiently driving reductions in fugitive dust emissions. According to the EPA, 'cumulative impacts are expected to develop or worsen unless new complementary environment protection measures are put into place.'[1]

There is no sound evidence put forward or referred to in the Issues paper to support this assertion.

While data from the National Pollutant Inventory (NPI) shows increases in the estimation of emissions of PM_{10} between 2009-10 and 2012-13 (and a decrease in the years 2013-14 and 2014-15)[2], this data is not a

[1] NSW EPA, *Review of the Load-based Licensing Scheme: Issues Paper*, http://www.epa.nsw.gov.au/resources/licensing/lbl/load-based-licensing-review-issues-paper-150397.pdf, p. 16.

[2] Ibid.

reliable tool for predicting or accounting for actual offsite (i.e. beyond the licensed premise boundary) PM_{10} emissions.

This is clearly demonstrated by the EPA-managed Upper Hunter Air Quality Monitoring Network (UHAQMN) which shows that PM_{10} (and $PM_{2.5}$) emissions have been progressively decreasing every year since 2013. This decrease in dust emissions, as evidenced at the 14 UHAQMN sites across Singleton, Muswellbrook and the Upper Hunter region, has been occurring despite the overall intensification of mining (as reported under the NPI), largely as a result of surges in mining production.

This decreasing trend in dust emissions indicates existing regulatory and non-regulatory control mechanisms, such as adherence to various licence conditions (including development consent and Environment Protection Licence (EPL) conditions), implementation of the EPA's "Dust Stop" program (among others) and use of best practice measures (see below), are proving effective in reducing dust emissions at mining operations in NSW.

Modelling by Deloitte Access Economics shows the current cost of meeting existing offsite dust standards is significant, and amounts to approximately $168 million for the NSW coal industry annually.[3] Despite being excluded from the LBL scheme, the coal industry is therefore already investing significant capital to improve air quality standards.

There is therefore no strong rationale why these existing programs should be supplemented, or replaced, through an extension of the LBL scheme to mining, at significant additional cost for no demonstrated environmental benefit.

Best practice techniques have already been adopted

Most available abatement opportunities have already been pursued by industry through the adoption of innovative and best practice management techniques across the state. The only remaining measures to reduce emissions and any associated offsite impacts would therefore be to reduce actual production.

Extending the LBL scheme to mining would therefore represent an additional, unavoidable and inequitable form of taxation and would merely penalise proponents for producing coal, rather than incentivise them to pursue improvements in environmental performance.

Yancoal notes this would be at odds with the stated objectives of the LBL scheme as set out in Clause 13 of the Protection of the Environment Operations Act 1997 (POEO Act), which states the Scheme shall seek to reduce pollution 'in a cost-effective and timely manner' and 'give industry incentives for ongoing improvements in environmental performance and the adoption of cleaner technologies.'[4]

Existing measures are already in place for water pollutants

Yancoal believes the Issues Paper has also failed to produce a strong rationale for extending the LBL Scheme to include water discharge from mining operations.

Existing regulatory measures, such as the Hunter River Salinity Trading Scheme (HRSTS) and individual site EPL license conditions on discharge criteria, have been designed to address water quality concerns in areas proximate to major mining operations.

[3] NSW Minerals Council, *NSW EPA – Load Based Licencing Issues Paper: NSW Minerals Council Submission*, p. 4.

[4] Protection of the Environment Operations Act 1997 (POEO Act), Clause 13 (b) (c).

Yancoal notes the Government's 2016 Guide to Better Regulation[5] showcases the HRSTS as an example of a market based instrument that is effective in minimising the impact of regulation by using economic incentives, with the subsequent result of minimising salinity impacts on the Hunter River Catchment.

The EPA has presented no substantial evidence or argument that current regulatory or non-regulatory measures are failing in their intended purpose, or that there is a pressing need for more radical regulatory intervention to promote better water quality outcomes.

An LBL scheme would be overly complex to apply to mining

Yancoal believes the original rationale for excluding mining from the LBL scheme still applies and extending it to include mining would be complex and enormously costly to industry, without delivering any improvements to environmental outcomes.

Yancoal notes industries such as mining were originally excluded from the scheme due to the inherent difficulties in measuring emissions from non-point source pollution sources. Alternative regulatory mechanisms, including those outlined above, were deemed a more appropriate way of improving environmental performance.

The Issues Paper suggests this may no longer be the case as 'improvements in emissions estimation have been made for a broad range of sectors including diffuse emissions from mining activities.'[6] One of the improvements the EPA points to is the development of the NPI.

Yancoal is of the view current techniques remain inadequate for measuring emissions and developing a fee structure for the LBL scheme, and the existing regulatory regime has been demonstrated to be effective in minimising emissions.

Techniques for the NPI, for example, over-estimate emission totals by using conservative assumptions to account for uncertainty. While this may be appropriate for proponents in developing conservative estimates for use in environmental impact statements, its design is not suited to the operational phase of a project, and specifically to the quantitative estimation of emissions for load-based licence fees or the impacts incurred by such emissions.

These techniques only provide a very coarse indication of emissions from operations as they do not distinguish between emissions generated by an activity and those that may extend beyond the premise boundary and cause an impact. Yancoal also notes there has been no material change to these estimation techniques since their introduction by the United States Environmental Protection Agency (USEPA) in 1985.

Broadening the LBL scheme would therefore require the development of a sophisticated and complex formula to address these issues, and the Issues Paper has failed to adequately address whether this would be possible and whether it would deliver better environmental outcomes than the existing regulatory mechanisms.

The Issues Paper also fails to address why alleged 'improvements in emissions estimations' have rendered the scheme practicable in the context of mining, but impracticable for other industries initially excluded such as agriculture.

[5] NSW Finance, Service & Innovation, *NSW Guide to Better Regulation*, https://www.finance.nsw.gov.au/sites/default/files/guide_better_regulation_october_2016.pdf

[6] NSW EPA, p. 41.

There is no evidence that greater environmental outcomes would be achieved

As discussed above, existing regulatory and industry adopted non-regulatory mechanisms are already effective in controlling dust and water emissions from mining operations in NSW.

It is Yancoal's opinion that any further significant reduction in offsite mining related emissions would only be achieved through a reduction in production, which would have perverse outcomes such as reducing workforce numbers and royalties payable to the State.

Further, an LBL scheme applied to mining would only serve to increase existing regulatory burden with a commensurate increase in the cost of implementation and management without achieving better environmental outcomes than those already achieved under existing mechanisms.