

19 July 2021
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Via email: gary.laidlaw@epa.vic.gov.au

Dear Mr Laidlaw

GUIDELINE FOR ASSESSING AND MINIMISING AIR POLLUTION IN VICTORIA

The Construction Material Processors Association (CMPA) is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2019/20, the sector supplied 63 million tonnes of construction materials to the market, at a value of approximately \$1.1 billion. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia.

The CMPA produces Guidelines such as Noise and Dust management to endeavour to raise the standards (i.e. minimise risks) of operation across its Membership. These Guidelines had been reviewed by EPA. With the introduction of the new Environment Protection Act 2017 these documents are in the process of being updated and CMPA welcomes EPA input.

Thank you for the opportunity to comment on the Guideline for assessing and minimising air pollution in Victoria (Guideline).

General Comments

Inherent risk (mentioned throughout the Guideline) is a term that has been popularised by three of the big four firms over the last few decades. As a result, a number of organisations, government and private sector have adopted this controversial term.

Today the most common interpretation of 'inherent risk' refers to the nature and level of risk in the absence of any controls. As such this is a term without any scientific foundation or support in reputable academic literature for its use in risk assessment.

The origin of the use of the term in this context is somewhat uncertain but appears to have been initially used by one of the big four firms in their early risk management products. Its early use was with respect to conducting a two-stage risk assessment process. The stage represented a very quick (and somewhat shallow) screening assessment. This allowed a large number of risks to be assessed without a detailed examination of control effectiveness occurring. The intent was to prioritise risk (which was termed inherent risk) with an intuitive appreciation of controls, not to assess risk in the complete absence of controls. A shortlist of risks was then selected and subjected to a second assessment involving a more evidence-based consideration of control effectiveness.

There was never an intent to assess risk at any stage assuming the complete absence of controls. Unfortunately, over the succeeding years, the concept of inherent risk has been erroneously assigned this unfortunate meaning.

The world's first risk management as developed in Australia (jointly within New Zealand as AS/NZS 4360:1994) by a team of experts that comprised the Australian Standards Committee OB007 – Risk management. A number of the internationally known risk management experts from these early days are still members of OB007 today. The Australian/New Zealand risk management Standard eventually transitioned into the ISO31000 risk management standard, a process led by Australia.

A consistent position of the OB007 experts over the last three decades has been that the interpretation of 'inherent risk' as risk in the absence of controls was a meaningless and misleading concept. Accordingly, the term is not recognised in Australian Standards or ISO publications produced by their respective expert committees. Indeed, expert members have published and presented at conferences on the misuse of the term of 'inherent risk' and that it holds little value or validity in contemporary risk management, and can lead to poor quality analysis. Several of these experts have spoken publicly on how the use of the term 'inherent risk' demonstrates a fundamental misunderstanding of the nature of uncertainty and risk and should be avoided at all costs.

At its most basic, assuming the absence of all controls, will invariably lead to most risks being assessed as catastrophic. Even the 'inherent risk' of driving a motor vehicle is almost guaranteed to result in a major fatality incident by just turning on the ignition.

Specific comments

Page Number	Guideline	CMPA comments
p.3 1 st para and p.11 1 st para	<i>It is a technical guideline for air quality practitioners and specialists with a role managing pollution discharges to air.</i> <i>This guideline provides guidance to people who are involved in commercial, industrial, agricultural, transport, mining or extractive activities and who have responsibilities under relevant environment legislation to eliminate or minimise their risks associated with air emissions.</i>	Who is the Guideline for? The Executive summary (p.1) states that it is for air quality practitioners and specialists whilst in the Introduction (p.11) the guideline is for people who are involved in extractive industries and have legislative responsibilities. If it is the latter, then the document is inequitable in that it has disproportionate requirements and is far too complex for small to medium extractive industry operations (< 150K tonnes per annum). It is believed that whilst the intent of the EP Act 2017 is to protect human health and environment it is not the intent to be a consultants' feast to the detriment of the extractive industry.
p.12	<i>This guideline outlines a range of ways to identify, assess and minimise risks. Where other approaches may be suitable depending on the circumstance, advice should be sought from EPA where this may apply.</i>	The risks associated with dust emissions PM _{2.5} or respirable crystalline silica dust (RCSd) are well established and understood by the extractive industry in Victoria including best management practice for their mitigation and control. CMPA has produced a Dust Management Guideline (2016) and a RCSd (OHS) Management Guideline (2021). The former having been reviewed by EPA, the latter by WorkSafe. CMPA proposes here that CMPA update the 2016 Dust Management Guideline into 2 documents: Nuisance Dust and RCSd; to be reviewed by EPA to meet the intent of the new EP Act 2017 and associated legislative instruments. This will then provide a practicable and proportionate Guideline that benefits human health and environment, the extractive industry and EPA.
p.44 3 rd para	<i>The risks from a site's emissions must always be considered in the context of the cumulative risks posed by other air pollution sources. The consideration of background concentrations of all air pollutants is therefore always required as a critical step in understanding the overall risk to human health or environment.</i>	What happens in the case where an extractive industry is compliant with the GED but there are neighbouring air polluters that are not. Will they still be allowed to expand their production rate or extraction limit?

p.45 Table 1 - Level of assessment for mining and extractive industries should be changed to:

	Large mine or quarry greater than 500,000 t/yr extraction	Medium mine or quarry between 150,000 t/yr and 500,000 t/yr extraction	Small mine or quarry between 50,000 t/yr and 150,000 t/yr extraction	Mine or quarry with yearly extraction below 50,000 t/yr extraction
Urban area	Level 3	Level 3	Level 2	Level 1
Rural area close to residences (less than 500 m from the limit of work described in the work plan)	Level 3	Level 2	Level 1	Level 1
Rural area (residences more than 500 m from the limit of work described in the work plan)	Level 2	Level 1	Level 1	Level 1

p.45 Table 1 - Level of assessment for mining and extractive industries.

	Large mine or quarry greater than 500,000 t/yr extraction	Medium mine or quarry between 150,000 t/yr and 500,000 t/yr extraction	Small mine or quarry between 50,000 t/yr and 150,000 t/yr extraction	Mine or quarry with yearly extraction below 50,000 t/yr extraction
Urban area	Level 3	Level 3	Level 2	*
Rural area close to residences (less than 500 m from the limit of work described in the work plan)	Level 3	Level 2	Level 1	*
Rural area (residences more than 500 m from the limit of work described in the work plan)	Level 2	Level 1	*	*

*No assessment — application of best practice management, for example, CMPA Dust Management Guideline available at <https://cmpavic.asn.au/publications/support-sheets/>.

Page number	Guideline	CMPA comments
p.53, 2 nd para	<i>AQACs are not intended to be concentrations one can 'pollute up to'.</i>	This is similar to CMPA's (OHS) RCSD Guideline where an action level is taken as half of the Workplace Exposure Standard for Respirable Crystalline Silica Dust

Summary

- The Guideline needs to be made more simplistic and practicable which is near impossible with the range of extractive industry sizes that it encompasses.
- The EPA needs a practicable and proportionate approach for small to medium extractive industries that benefits human health and environment, the extractive industry and EPA. As suggested, this would be achievable through the updating the CMPA 2016 Dust Management Guideline (Best Practice Management) into 2 documents: Nuisance Dust and RCSD; to be reviewed by EPA to meet the intent of the new EP Act 2017 and associated legislative instruments.
- There needs to be an impact assessment of the Guideline.
- Inherent risk assessment step should be removed.

Conclusion

That EPA should thoughtfully consider the changes proposed by CMPA to the EPA Guideline for assessing and minimising air pollution in Victoria.

I would be happy to discuss our comments further at your invitation.

Yours sincerely



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