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Environmental Regulation Inquiry
Victorian Competition and Efficiency Commission
via email to environment@vcec.vic.gov.au

Sir/Madam

RE: INQUIRY INTO VICTORIAN ENVIRONMENTAL REGULATION

The Construction Material Processors Association[1] (CMPA) and its Members are aware of the importance of environmental regulation and the community's expectation of industry to be environmentally sustainable and limit their carbon impact, however are also keenly aware of the cumulative impact and increasingly costly and restrictive nature of some regulatory tools.

Our Members are small to medium enterprises (SME). Such SMEs are the driving force behind the extractive industries and process a substantial percentage of the state's tonnage output, which in 2006/07 consisted of over 52 million tonnes extracted plus recycled materials. These operations are responsible for all new Work Authority applications made in the last two years and the majority in the last 10 years.

Since 1966, the extractive industry has been identified with its own Act (*Extractive Industries Act 1966*, and more recently the *Extractive Industries Development Act 1995*) having key objectives of land reclamation, environmental and amenity management and being secured through the issuing of Work Authorities.

The current issues of concern to the CMPA for consideration by the Commission are that:

- The Extractive Industries Development Act 1995 is not integrated into a Resources Industry Legislation Bill as this will hinder the sustainability and entrance of SMEs into the extractive industry.
- Earth resources are protected by the government to prevent further sterilisation due to urban encroachment, zoning changes, and legislation as has been the case over the last ten years.
- Environmental legislation should only be introduced once an environmental failure is proven and the science is sound. It must give consideration to the benefits to society of utilising natural resources.
- All legislative tools (including 'grey letter law') should be subject to financial impact assessments to ensure the legislative burden is proportionate to the environmental impact.
- Financial impact assessments should be subject to review to ensure that estimations are accurate and actual costs are proportional to the consequences, several years after legislation is introduced. Extreme variances should trigger a review of the legislation and a negative KPI upon the responsible authority.

We note that the Commission is interested in identifying a small number of case studies to underpin any recommendations. The CMPA would be pleased to assist in this and has commissioned a study to that end.

We are happy to meet with the Commission at any point if we can assist further.

Yours sincerely

S.Andrew

Sarah Andrew, Project Manager

[1] Members extract, process or otherwise work in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling

Submission to the

Victorian Competition & Efficiency Commission

Regarding it's

"Inquiry into Victorian Environmental Regulation"

By the

Construction Material Processors Association (CMPA) Victoria

October 2008

1. Introduction

By its nature, legislation governing an industry reflects the state of the industry at the time and the attitude towards it by the community. As these conditions change, so too does legislation through amendments or more fundamental action.

The Construction Material Processors Association[2] (CMPA) is aware of the importance of environmental regulation, however are also keenly aware of the cumulative regulatory burden and increasingly costly and restrictive nature of some regulatory tools.

Our Members are small to medium enterprises (SME). Such SMEs are the driving force behind the extractive industries and produce a substantial percentage of the state's tonnage output, which in 2006/07 consisted of over 52 million tonnes from 545 Work Authorities. Furthermore, whilst the recycled materials and mobile crushing and screening sector does not report data, it is estimated that over 3 million tonnes of material are processed in this sector each year.

Over the last five years, 216 million tonnes of material has been supplied to the Victorian market. However only seven new Work Authorities (of which three are hard rock operations) have commenced supplying material to the Victorian market in capacities greater than 100,000 tonnes/year during this time. SMEs are responsible for all new Work Authority (WA) applications made in the last two years and the majority in the last 10 years.

The current issues of concern to the CMPA for consideration by the Commission are that:

- The *Extractive Industries Development Act 1995* is not integrated into a *Resources Industry Legislation Bill* as this will hinder the sustainability and entrance of SMEs into the extractive industry.
- Earth resources are protected by the government to prevent further sterilisation due to urban encroachment, zoning changes, and legislation as has been the case over the last ten years.
- Environmental legislation should only be introduced once an environmental failure is proven and the science is sound. It must give consideration to the benefits to society of utilising natural resources.
- All legislative tools (including 'grey letter law') should be subject to financial impact assessments to ensure the legislative burden is proportionate to the environmental impact.
- Financial impact assessments should be subject to review to ensure that estimations are accurate and actual costs are proportional to the consequences, several years after legislation is introduced. Extreme variances should trigger a review of the legislation and a negative KPI upon the responsible authority.

Each of these issues needs to be fully addressed to ensure our Member's businesses are able to survive. A brief discussion of these matters and their implications for the extractive industry is provided in the following sections of this Paper. These issues are presented on the basis that they are representative of our Members' thoughts and feelings.

Separate to this Paper, but providing supporting information, is a study funded by the CMPA titled '*Uncertainties in the Work Authority approval process'*. This study intends to accurately and credibly support the industry's proposition that regulatory burdens are increasing and systems of government are failing to provide the community with improved outcomes. It will do this by investigating a sample of Work Authorities who have been recently affected by environmental (and other) legislation. The Scoping Paper to this study is attached, and we would welcome any support or suggestions from the Commission.

[2] Members extract, process or otherwise work in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling

2. The Construction Material Processors Association (CMPA)

The CMPA is an industry Association that aims to:

1. Conduct its affairs with honesty and integrity;
2. Demonstrate its commitment to the:
   a. Viability of the industry
   b. Protection of the environment
   c. Community in which it exists;
3. Vigorously pursue with the government and others issues of widespread concern to members;
4. Demonstrate leadership and a sense of direction for the industry;
5. Act as a resource and provide support to members through the delivery of cost savings and assistance in complying with legal obligations;
6. Foster unity and cooperation between members and others;
7. Promote continuous improvement through education, training, and other activities

Since the inception of the CMPA in January 2000, the Association has dealt with numerous issues in order to assist the industry in moving to the cutting edge. This has included the following activities:

- *Vocational Education and Training of Industry Participants*

  The CMPA has worked tirelessly to assist industry to adopt Certificate II and III training from the Extractive Industries Training Package. This has included many hours of consultation with all parts of industry to ensure training materials are of a suitable level, consulting with government bodies responsible for training to ensure it facilitates industry's needs, through to the facilitation of units of competency that teach trainees industry best practice. Together this has seen industry gain a higher degree of language and literacy skills, improved uptake of vocational education and training, and assisted in lifting the standards of industry.

- *Defining Industry Best Practice*

  The CMPA has facilitated the definition of industry best practice through workshops and developing tools to inform and educate industry on how they can better their businesses. Issues addressed include taxation, site rehabilitation, site safety and employment remuneration.

- *Assisting in Making Compliance Simpler*

  The CMPA has developed a number of tools to assist in compliance, ranging from 'Employee Wage Books', to pre-start and end day safety checks, to SOPs and sample forms that sites can apply without the need for considerable development expenses. Another means to make compliance simpler has been through the CMPA's representation of industry to government, and facilitating many different training sessions at both a Certificate II level and for managers and site owners.

- *Representing and Protecting Industry*

  Representing and protecting industry is one of the roles of the CMPA fulfilled by responding to the numerous proposals to change regulation each year. Submissions have been made on a wide range of areas, all of which affect the day-to-day operation of industry.

Over the past few years, the CMPA has found it to be most effective for industry, and subsequently for the Association, to be involved with the latest means of educating industry participants, to present government with proposals rather than have them presented to industry, and to give industry the skills they need to prevent issues arising. It is with this philosophy in mind that the CMPA has maintained its strong and greatly valued relationship with the DPI and its officers. Their assistance has been invaluable to industry and of great benefit to all involved.

3. Current Legislative Burden

The extractive industry has been regulated by its own Act since 1966 and is possibly one of the more heavily regulated industries within the state due to the ease of introducing new obligations, particularly upon new operations.

The *Extractive Industries Development Act 1995* emanated from the earlier *Extractive Industries Act 1966* ("1966 Act") which in turn was established recognising the particular importance of industry issues associated with extractive materials that were seen as distinct from general mining operations.

In addition to the *Extractive Industries Development Act 1995*, this sector is required to assess potential impact, often gain approval, and set in place management plans for the following matters prior to commencing or varying a WA:

- Aboriginal heritage
- Aquatic assessment
- Community engagement *(recently proposed)*
- Cultural heritage
- Air quality / dust emissions assessment
- Flora and fauna assessment
- Landscaping and architecture
- Native vegetation
- Noise assessment
- Rehabilitation plan
- Rock assessment
- Safety management plan
- Traffic assessment
- Water management
- Work Plan

In addition to these requirements is the planning and appeals process which thoroughly tests the WA. Members have reported that although the cost and number of applications is creating a considerable cumulative burden, they would not support a blanket EES requirement.

Environmental legislation, if not all legislation, appears to be created without any consideration of the cumulative legislative burden that is being placed upon businesses particularly at the approval stage. This is particularly so for the extractive industry where it is reaching a point of saturation.

There appears to be considerable focus in environmental legislation to ensure that no application 'falls through the cracks', with approvals being required at a number of points during an application. Furthermore, the assessments conducted at earlier phases of an application are not being accepted at later stages. These two conditions are resulting in considerable duplication of investigations, and wasting of limited financial resources.

The approval process has reached a point where the CMPA is advising Members not to proceed with a WA application unless they have allowed five years from start to finish (i.e. initial investigation to planning permit approval) and are willing to spend $500,000 irrespective of the size or location of the site without accounting for any appeal process (which can reach $300,000 in its own right). This is unsustainable.

The CMPA has commissioned a study to evaluate this claim of increasing costs and timeframes for approvals and the impact this is having upon our industry. A copy of the Scoping Paper to this study is attached.

Best practice legislation needs to ensure that the overall legislative requirements are not placing an unsustainable burden upon industry. This needs to be assessed at both a state-wide and departmental level.

Reviewing Resources Legislation

It is interesting to see that government has proposed to merge the current Act with the *Mineral Resources (Sustainable Development) Act 1990* to form a singular legislative tool for these two very different industries.

CMPA contends that the *Extractive Industries Development Act 1995* has enhanced the quality of operators and the diversity of providers throughout the state since its inception in 1966 and as such should be maintained with revision rather than be revoked.

Particular concerns are raised in relation to the proposed duty to consult with community and changes to rehabilitation bonds.

It is anticipated that a Business Impact Statement, particularly in terms of any proposed duty to consult, will be prepared and industry hope that this will clearly detail the financial impacts thoroughly and accurately, and that a review will occur following any implementation.

Previous reviews have not given due consideration to the significant value gained by the state in maintaining a separate EID Act. Victoria enjoys a distribution of ownership not equalled in any other state resulting in a highly skilled workforce and competitive market.

CMPA feels that this opportunity may have been lost as a result of focusing solely on merging the Acts. Unproven issues and the resultant regulatory changes have been put forward in an attempt to address merging more so than improving legislation for the extractive industries.

Merging the EID Act into the MRSD Act to be consistent with other jurisdictions should not be the sole reason for decision making, especially where it will:

- Remove the appropriate 'light touch' regulatory approach;
- Increase our duties and therefore red tape;
- Create industry and community confusion; and
- Create additional and unnecessary fiscal imposts without the associated improvement in environmental outcomes.

These issues present SMEs with high-risk financial imposts, both at application and on an ongoing basis. The nature and projected extent of these imposts threatens the sustainable viability of many of our Members' livelihoods and therefore their long-term participation in the state's extractive industry.

The CMPA would happily provide further information to the Commission on this matter if requested.

Considerations

- That the proposed merger between the *Extractive Industries Development Act 1995* and *Mineral Resources (Sustainable Development) Act 1990* does not occur.
- That the process of assessing best practice legislation includes means of ensuring the legislative burden is sustainable for SMEs.

4. Government Protection of Earth Resources

Government needs to take on greater responsibility for ensuring the efficient use of the state's essential earth resources by:

- Identifying and protecting existing and future strategic resources (both for the wider community and in the development of major public infrastructure works);
- Ensuring access to the best available resources so that they can be efficiently utilised and provided at competitive prices;
- Providing a regulatory framework to allow the industry to operate safely and efficiently with minimal environmental and amenity impacts.

There presently is no government authority responsible for the protection and security of earth resources; with the Department of Primary Industries – Minerals and Petroleum only responsible for issuing approvals and ensuring the ongoing management of the WA.

Over the last ten years, there has been little effort in protecting earth resources, with many suitable resources becoming sterilised due to urban and lifestyle encroachment, zoning and legislation changes. This has reached a point where sand is now being carted to Melbourne from 150km away and where hard rock reserves in Melbourne, Geelong and the LaTrobe valley are limited to a small number of suppliers and are fast being exhausted without any approved replacement reserves available.

The earth resources provide essential construction materials that are vital for the continued development and maintenance of our local community, domestic and business infrastructure. The importance of properly constructed and maintained road infrastructure to the safety of our citizens and to our economic prosperity cannot be over emphasised.

When using the estimated resident population figures (June 2007) from the Australian Bureau of Statistics, at 5.205 million people[3] and the DPI production data in 2007 of 52.29 million tonnes[4], it is established that 10 tonnes of material was used by each Victorian in 2006/07. This demand has to be provided from mostly non-renewable sources that are only found in specific geological locations. Construction material products processed from these sources are mostly low value, very heavy and have to be transported to their point of use in large trucks. Contrary to popular opinion, the main amenity and environmental impact resulting from our industry is the transport of these materials.

Ensuring that the best and closest resources are protected and made available will have the greatest effect on reducing the real environmental and amenity impacts to the community. The result of not doing this is now becoming evident in the Sydney region where construction materials will soon be transported over 150 kilometres to the market. The economic and environmental cost of this increased transport in the Sydney region will be very significant.

Considerations

- That a government authority is charged with the protection and long term security of earth resources.
- That best practice legislation ensures construction material processors and the wider community make the best use of earth resources in a way that is consistent with the economic, social and environmental objectives of the state.
- That there are mechanisms that encourage the identification of the state's assets.
- That there are mechanisms in place that encourage the protection of access to strategic earth resources throughout the state.

[3] See http://www.abs.gov.au-Publication3101.0

[4] See Victoria's mineral, petroleum and extractive industry 2006/07 statistical return

5. Introducing Environmental Legislation

Environmental legislation should only be introduced once an environmental failure is proven and the science is sound. To ensure the continued viability of our sector, it is essential that government only legislate those environmental issues that are proven by peer review, are supported with science that is able to accurately and consistently evaluate and monitor the issue, and can be applied equally to all sections of society.

Emerging issues that are not yet proven should be managed by non-compulsory guidance as this allows a period during which industry can gain an understanding of the issue, and develop and implement systems of management. It provides an opportunity for the scientific community to peer review and prove the issue.

Scientific assessment tools must be available for use prior to legislation being made that are accurate, repeatable and readily accessible. Ideally tools should comply with an international or national scientific standard, such as approved laboratories of the National Testing Authority of Australia. This is not the case currently and results in a wide range of scientists or consultants who produce results that are not repeatable.

Native Vegetation

An example of this is the native vegetation framework. Our Members recognise that it is important to protect the flora and fauna of the state, however question the ability of Victoria to return to the state of the environment before European settlement without considerable social upheaval.

Native vegetation assessments only take into consideration the negative impact of removing such vegetation, there is no method to assess the value to the community of any earth resources underneath.

Native vegetation is not yet supported with sound scientific methods. Members report on highly inaccurate EVCs and assessments not able to be repeated. We understand that the skills in this area of science are improving, however contend that legislation or 'grey matter law' should not be enacted until such a point that the scientific community has the necessary protocols in place.

Environmental legislation must give consideration to the benefits of the community utilising natural resources. It is important to recognise that there is a point when the community benefits more from well located and managed construction materials as against transporting materials across long distances. Society cannot continue to exist as we know it without these resources, and this must be recognised and championed by government. This concept needs to be considered by government and where possible incorporated into decision making protocols.

Environmental legislation should be designed in a way to maximise the value to the environment, that is to say the environment will benefit more if proponents invest more into management systems rather than extensive investigations. This would provide the added benefit of ensuring operations have invested more heavily into their plant, equipment and management systems.

Considerations

- That best practice legislation 'grey letter law' requires scientific proof of the issues and the scientific community must have the skills to assess and monitor with accuracy, repeatability and in an approved manner.
- That best practice environmental legislation is supported with formal assessment protocols requiring externally certified systems.
- That best practice environmental policy gives due consideration to the value of earth resources to our communities.
- That best practice environmental legislation needs to encourage investing into improved plant, equipment and management systems, rather than costly and time consuming investigations thereby maximising the benefits to the community.

6. Financial Impact Assessments

In recent years, there has been a growing interest in environmental and associated issues such as corporate governance, triple bottom line reporting, ethical investment and other theories and concepts which address the processes associated with business behaviour and accountability.

Adapting to these developments often makes good business sense, with improved community perceptions and an improved financial bottom line. However, on occasions, specific environmental and other requirements can affect the very viability of businesses.

Financial impact assessments are an important method of assessing the potential impact of any legislation. Although the information is often difficult to establish, it provides industry and the government the opportunity to assess the impact before progressing too far.

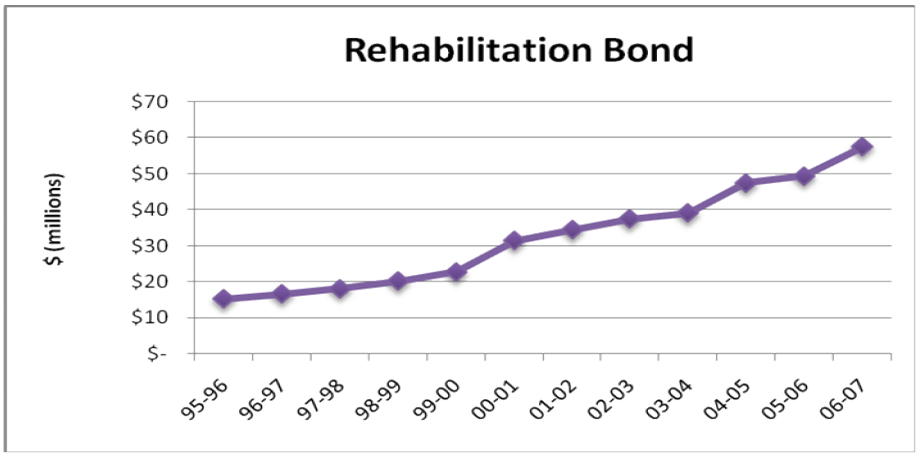
Due to the benefits of these assessments, the CMPA holds that all legislative tools (including 'grey letter law') should be subject to financial impact assessments to ensure the legislative burdens are proportionate to the environmental effect. That is to say, that there is some consideration of the overall, long term benefit of protecting an environmental asset compared to the cost of the legislative burden.

Rehabilitation Bonds under the EIDA

The legislated objective of the rehabilitation bond system is to return the land on completion of the extractive operations to a safe and stable landform, minimise visual impact, and address native vegetation obligations to ensure that no future responsibilities are placed upon government.

The economic objective of the rehabilitation bonds system is to reduce potential costs to the community from WA sites at the end of their economic life while still making the best use of these resources.

A WA holder must set in place a bond (in the form of bank guarantee) to cover expected costs of rehabilitation of the site, in case the WA holder does not perform sufficient rehabilitation. The state presently holds $57.5 million of bank guarantees for the Work Authorities of Victoria as at June 30, 2007 with a massive increase of approximately 280% over the preceding eleven-year period seen below.



The disproportionate increase in bonds in recent years is having a range of negative effects:

- It is curtailing investment by SMEs in the industry;
- It is reducing the ability of firms in meeting their community, environmental and safety obligations; and
- Is affecting the financial viability of SMEs.

A major problem of the bond system is that it is not an expense as such but a liability on a firm's balance sheet, tying up working capital and escalating the borrowing burden being placed upon those businesses. Furthermore with monies sterilised in the bond, this leaves the operator having to double the working capital required to carry out their ongoing rehabilitation program.

Underlying problems with the bond system and how it is administered are outlined as follows:

- There is no foundation to warrant the present assessment process;
- Insufficient data exists to properly evaluate the effectiveness of the bond system and the level of funds derived relative to the potential cost of required rehabilitation;
- The system does not provide any incentives for WA holders to carry out rehabilitative work on their own initiative and on an ongoing basis;
- The system is complex, subject to field operative's interpretation and given to bureaucratic wrangling, with an eight-step process for revising a rehabilitation bond, leading in some cases to protracted disputes between WA holders and the government; and
- Pre-assessments for greenfield sites are restricting entry as the assessed liabilities are not coming into being for some time.

Financial impact assessments should be subject to periodic review to ensure estimations are accurate and actual costs are proportional to the consequences several years after legislation is introduced. Extreme variances should trigger a review of the legislation and a negative KPI on the responsible authority.

Our Members are frequently reporting substantial discrepancies between the costs outlined in the impact assessment to that experienced by the operator. There is clearly a short term, political benefit provided by a low, but inaccurate, impact assessment; however its long term impact will be borne by the community.

Aboriginal Heritage Variances

Although this Act is not within the scope of the Commission, it does provide a good example.

Cultural Heritage Management Plans required under the *Aboriginal Heritage Regulations 2006* were considered in the Regulatory Impact Statement, and estimated to cost approximately $20,000. Our Members are being quoted and charged closer to $30,000 not including the cost of implementing the plan.

This is severely impacting industry as had the impact assessment accurately assessed costs, either the legislation could have been revised or industry better prepared.

Consideration needs to be given in financial impact assessments to the cost of financing such changes, especially those that are incurred prior to a site's approval. This is a substantial cost, and is typically not considered in an impact assessment.

Considerations

- The rehabilitation bond issue hinges on government's need to continue to identify itself as having an obligation for the rehabilitation of WA sites within the extractive industry sector.

  The present practice of extinguishing these projected liabilities through rehabilitation bonds is an ineffective methodology for businesses to fund long-term liabilities and prejudices SMEs who retain a limited asset base with which they can support the process.

  The system should allow the capacity to pay more early on in the process if it suits the site. It should be a system which supports the principle whereby the end user pays for the total charges associated with the production of the materials (including rehabilitation). There would be less impact if any assessed liability outlay, which is not expected to come back for many years, were treated as an expense and not sterilised as in the present fashion.
- That financial impact assessments are required for all changes to legislation and 'grey letter law' to ensure that any impact is properly considered in the development process.
- That financial impact assessments are reviewed to ensure accuracy and where extreme variances are found the legislation is reviewed and negative KPIs enforced.
- That financial impact assessments give consideration to the financial costs of implementation.

7. Moving Forward

Environmental legislation is an important aspect of industry's regulatory landscape, and when implemented utilising best practice methods that are matched to society's expectations, can result in sustainable benefits for both community and industry.

Unfortunately, this is not presently the case. There is a large cumulative regulatory burden upon industry and there is an increasingly costly and restrictive nature of some regulatory tools that are being introduced.

Particular burdens faced by industry presently include:

- The proposal to revoke the *Extractive Industries Development Act* which is posed to place considerable additional burden upon the construction material processing industry;
- The lack of protection of the earth resources by government;
- The introduction of legislative tools without proven environmental failure and sound supporting science;
- Environmental legislation whose costs are either not understood or vastly underestimated when legislation is introduced.

This compliance burden is often a fixed cost; and small businesses disproportionately feel its effects. They can access fewer resources to interpret and implement compliance requirements and to keep pace with the cumulative burden of regulation and the ever changing regulatory environment.

Environmental legislation will benefit from the Commission's attention.

Best practice legislation should be encouraged that:

- Ensures the earth resources and the wider community make the best use of earth resources in a way that is consistent with the economic, social and environmental objectives of the state;
- Place mechanisms to encourage the identification of the state's assets, protection of access to strategic resources throughout the state, and ensures community benefit of utilising earth resources is considered;
- Requires scientific proof and ensures the scientific community has the necessary skills to assess and monitor with accuracy, repeatability and in an approved manner;
- Encourages investment into improved plant, equipment and management systems, rather than costly and time consuming investigations; and
- Requires the accurate assessment of any new financial burden, including financing costs, and periodical review of the financial burden to ensure that the benefits to community are outweighing the costs.

We hope that these comments are of assistance to the Commission and again repeat our offer to expand on any issues within the CMPA's expertise as the Commission sees fit.