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4 September 2006

Dr L Denison
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EPA Victoria
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Dear Dr Denison

RE: PROTOCOL FOR ENVIRONMENTAL MANAGEMENT – MINING & EXTRACTIVE

Thank you for attending a meeting of representatives of the CMPA on 8 August 2006. The attached submission responds to the Consultation Draft Protocol for Environmental Management. The submission should be accepted in the knowledge that on 11 November 2000 the Association went to considerable time and expense in submitting a response to Mr Brian Robinson, Chairman, Environment Protection Authority on the Draft Air Quality Improvement Plan (AQIP) promulgated at the time. That submission was prepared anticipating that the consultation process for the draft AQIP was part of the decision-making process for the proposals that would lead to regulatory change. It was noted that there was a clear necessity at that stage for the affected parties to provide input into the process so that decision makers were provided with the best available advice with respect to all the potential issues – benefits as well as impact costs.

The Association appreciated the opportunity to input to that process and recognising the preliminary nature of the proposals welcomed further direct consultation on the matter and any support EPA Victoria might offer in widening the knowledge-base of its members in this important area. In the event, no feedback was provided then or since and the next correspondence about the issue was the current draft Protocol. Given this history of behaviour I am sure you will understand the sense of anger and frustration our members feel in being ignored.

However, as the membership is, by the nature of its work, accustomed to dealing with adversity and the challenges of market conditions, it has resolved to continue to fight for a better deal from its regulators and law makers.

Air quality is a significant issue which directly affects our members' ability to interact in a positive manner with their local community. The CMPA understands that the issue of air quality requires the diligent participation of the business owner, employees and the regulator. It stresses, however, the need for this to be managed in a way that achieves tangible results without imposing unnecessary financial stress on the industry. This fundamental point will continue to be articulated because the Association, along with many other industry sectors in Australia, can see the increasing costs of regulatory compliance adding to production costs and making our sector (and others) uncompetitive with our near northern neighbours. We see the gradual degeneration of industries in Australia with resulting loss of jobs and GDP. Unless regulators recognise and understand this, there will be an inevitable closure of industries and a lowering of living standards.

The Association regards the Protocol in its present format as an invasive and unwarranted additional regulatory burden with little demonstrated need or benefit either for the community or industry and accordingly, considers it should be re-drafted.

In order for issues to be addressed by industry they need to be accurately identified and defined so that any remedial action proposed can be specifically targeted rather than taking a broad-brush approach to the problem. A broad-brush approach is likely to impose unjustifiable costs on sections of the community/industry that are not unreasonable polluters. If the extractive industry has particular problems the Association **wants to know**.

It must also be noted that most of the perceived issues within the extractive sector can be addressed through:

- Systems of management (work plans);
- Vocational training;
- Capital selection; and
- Regulatory practices.

We have already made considerable steps along the way in addressing air quality issues and had the dialogue we sought of EPA Victoria in our 2000 submission been allowed to develop, you would recognise these initiatives.

We see that it is a matter of urgency that EPA Victoria recommends to Government, in addressing its commitment to reduce the regulatory burden on business, that the Regulatory Impact Statement process is applied to SEPPs and their supporting protocols.

Also, while it may be administratively convenient to combine the extractive and mining sectors there are many reasons why this is unfair and grossly inappropriate.

In summary, the continued theme coming from our members is that if there is an issue, it would be more effective to address it by a direct approach rather than imposing broad brushed requirements on all areas of the sector.

Please do not hesitate to contact me should you wish to discuss this submission further or meet again with the Association's members. Email enquiries@cmpavic.asn.au or call on 03 5781 0655.

Yours sincerely

Grant Phillips
CMPA Management Committee Chairperson

CC: Head, EPA Victoria

SUBMISSION TO

EPA VICTORIA

CONCERNING THE

PROTOCOL FOR ENVIRONMENTAL MANAGEMENT – MINING & EXTRACTIVE

BY THE

CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION

SEPTEMBER 2006

1. INTRODUCTION

Extractives industries, by their very nature, produce an effect upon the local air quality. So too do unsealed roads, major civil works and a myriad of other human activities. This submission does not propose to argue this fact; rather it poses questions which, in the view of CMPA's members, need to be addressed to their satisfaction prior to the continuation of this process**. After all, it is the proponent of change who should demonstrate the need for such change.**

Over recent years, our members have experienced an ever increasing regulatory burden and additional 'red tape'. The CMPA therefore is very cautious of any new Act, regulation, code of practice, guideline, protocol, or industry best practice standard being proposed by any government body. With respect to these proposed additional responsibilities, the first questions the CMPA requires answers to are:

- **"Where is the case for change?"**
- **"Has an assessment been made of the benefits over the costs?" and**
- **"Is the proposed change able to be practically complied with?"**

On the issue of 'red tape', our State Labour government has publicly stated its intentions to reduce the amount and complexity of red tape being placed upon industry. At the Extractive and Mining Industry Advisory Board meeting on 28 April 2006 the Minister for Energy and Resources stated his Government's commitment to regulatory reform, that it wishes to work with industry to deliver solutions, and that it has led the campaign at Council of Australian Governments (COAG) on this matter. The Federal Government also has recently made substantial reforms in this area. This policy agenda does seem to be at odds with the heavy handed approach of the draft Protocol as, in its present form, there is widespread concern by our members that this has the potential to drive all but the most powerful businesses **out of the market**.

It is assumed that the intent of any new Protocol for Environmental Management supporting a State Environmental Protection Policy (SEPP) is going to benefit the greater community, not just require additional, inconclusive scientific studies. It would be deeply concerning if in five years from any change there was no clearly measurable improvement in environmental outcomes of our sector. Such an outcome would most likely be due to investment in scientific studies rather than encouraging more practical approaches of managing the emissions on a day to day basis.

Key discussion points supplied for your consideration are:

- Construction materials sector in Victoria and CMPA – this provides an overview of the sector, introduces the CMPA and importantly, connects environmental and safety risks associated with air quality and dust;
- The proposed Protocol – this provides a set of detailed comments on the proposal; and
- Vocational Training – this articulates our vision for a cooperative approach to achieve reasonable outcomes.

A discussion of each of these issues follows. These issues are presented on the basis that they are representative of our member's experiences and opinions.

2. CONSTRUCTION MATERIALS SECTOR IN VICTORIA & CMPA

2.1 The Extractive Industry Sector

A key component of the construction, building and, in many cases, manufacturing industries is the supply of competitively priced rock, stone, sand, clay and gravel products which are essential for the production of concrete, cement, bricks, tiles, asphalt, crushed rock products and a host of other applications. Stone is primarily used for construction of roads and buildings but also has other uses in engineering and manufacturing.

The industry is aware of the clear environmental benefits of extraction occurring close to market sources. It is characterised by relatively few large operators (3) and many medium to small operations. Many small-scale quarry operations have developed in rural and regional areas to satisfy a local demand.

Across the State almost 42 million tonnes of construction materials were produced on Work Authority sites at an average rate of $12.43[1] per tonne in 2004-05. That is, in that year for every Victorian person appropriately 8.3 tonnes of construction materials was used in the construction of their house, the beautification of their garden, the expansion of their roads, and the building of public facilities such as hospitals, police stations and schools. Any increased costs in production, as will be the case should the Protocol be implemented, will be passed on to consumers, thereby affecting their quality of life.

It is also important to note that within the last three years, the CMPA has become aware, through its members and professional service providers, of significant issues regarding shortages of materials within specific areas of the State. This has been articulated to Government in the CMPA's submission to the Melbourne 2030 study.

2.2 The CMPA

On average, each member of the CMPA employs 11 persons (although this ranges between 1 and 150), holds two Work Authorities and is a second or third generation quarry operator. Their operations are evenly distributed throughout the State and the businesses on the whole are privately owned. They suffer from the 'tyranny of distance' and are often isolated from the proper support of Government services. Typically, they are fiercely independent, are 'can do' people and are very critical of change unless clear, unequivocal benefits can be shown to result.

Since the inception of the CMPA in late 1999, the Association has dealt with numerous issues to assist the sector moving forward. Some of these include:

- Ensuring the continual presence of a vibrant, privately owned sector within the construction material processing industry;
- Defining minimum standards of operation for the industry;
- Representing and protecting the industry in a variety of forums;
- Implementing vocational education and training of industry participants under the Extractive Industries Training Package;
- Developing a culture whereby individuals consider that there is a purpose for succession planning or possible entry into the market; and
- Assisting in making regulatory coverage and compliance simpler, more effective and at least cost.

[1] Data drawn from DPI Annual Reports (Victorian extractive data)

Based on the achievements of the past few years the most effective *modus operandi* for the Association has been to be involved with the latest means of educating industry persons, to present Government with proposals rather than have them presented to industry, and to give industry the skills they need to prevent issues arising or at least be prepared for them.

2.3 Correlation between Managing Employee Health and Environmental Dust Outcomes

Minimising exposure to risks to the environment and people is a crucial issue for the extractive industry and the Association has worked closely with the various regulators in achieving necessary and appropriate standards. As part of informing itself on industry minimum standards in this area the Association consults widely with respected people from centres of excellence throughout the country.

Since its inception in 1999 the CMPA has continually supplied members with information, directed them to specialist providers to carry out the required testing, and identified management strategies to assist in ensuring they are managing their occupational health and safety (OHS) obligations.

There should be no doubt that managing employee's exposure to dusts is directly relevant and has a profound impact upon the reduction of environmental dust emissions from the activities undertaken within a working site.

The process of individual monitoring of employees identified to members that they needed to upgrade their systems of managing dusts being generated from their sites to ensure that the individual dosimeter reporting results were within the National Occupational Health and Safety Commissions (NOHSC) standards. This involved the following actions by members:

- Improved management of controls such as housekeeping around processing systems;
- Containment of transport movements;
- Reduction in stockpiles;
- Activation of rehabilitation programs on terminal faces;
- Upgrading of dust suppression and collection systems throughout processing systems;
- Targeted maintenance programs for adjusting dust curtains, skirtings and dust suppression nozzles;
- Watering of haul road systems; and
- A myriad of other activities throughout the whole working area.

Recommendation

- That resources are directed by Government to empowering Work Authority holders in managing the health of all persons on site and the environment in the form of one-on-one consultation between the regulator and themselves.

Conclusion

Those Work Authority holders who have managed the working environment of their sites as a result of their OHS obligations have also brought about reductions in environmental dust emissions from their sites as a corresponding outcome.

2.4 Credible Monitoring Data

In 2005 the NOHSC released a Preliminary Regulatory Impact Statement concerning a new national exposure standard for crystalline silica. That Paper is directly applicable to the proposed Protocol. In gathering information for a submission to NOHSC, the CMPA consulted with a range of people in academia and industry. Also, as part of keeping abreast of the issue as it affects our sector, the Association surveyed its members and sought information concerning their businesses especially related to the subject of the NOHSC's proposed changes. The questionnaire for the survey was developed in consultation with the Department of Primary Industries (DPI), the extractive industry's regulator. The results of the survey are summarised as follows:

- More than 58% of respondents had been in the industry for more than 15 years;
- A third of respondents owned relatively new (1-10 years) fixed and mobile plant;
- 42% of respondents were aware of the presence of silica and 22% had validated this by testing. A further 22% reported that they had had their quarries independently monitored for dust;
- Only 11% of respondents reported their company had implemented dust training;
- 13% of respondents reported that the impact of the proposed lowering of the exposure standards may force closure of the business and 20% reported the proposals would impose significant costs;
- 37% of respondents reported that they would be forced to close their business should a ban on silica dust be implemented.

The submission to NOHSC drew the following conclusions that are pertinent to the draft Protocol:

> *Existing OHS responsibilities already require employers to provide safe workplaces for their employees and impose substantial fines and penalties on owners where illness and injury occur at work. These requirements, along with the basic human responses to consider the environment in which employees work, together with the incentives to ensure ongoing business sustainability have propelled the whole issue of workplace safety to the forefront of employer's minds. Notwithstanding these considerations, it is foolhardy to impose cost burdens where they are not warranted nor justified.*
>
> *There is a need for a rigorous assessment of the current level of national exposure standards. Regulatory effort to date has not been rigorous – there has not been detailed monitoring. Any proposals for change must be underpinned by a set of reliable data collected by different industry groups. As this information is not available at present it is suggested that a rigorous monitoring program be implemented that will provide reliable data that can be used to assess adequacy of the current exposure standard.*
>
> *Such a monitoring program will necessarily involve the cooperation of industry. In this regard, the CMPA extends an offer to the NOHSC for the Association to be actively involved in devising an appropriate program that will provide useful information on which assessments can bemade about the need for further action in this area.*
>
> *Moreover, as part of a comprehensive monitoring program it is considered important that the opportunity be taken to raise awareness of the hazards involved in various quarrying activities such as generating particulate emissions. The CMPA has over recent years participated in developing training activities as part of national industry training initiatives and is willing to participate in any moves in training in silica dust minimisation and the need for regular monitoring.*
>
> *Monitoring over time may provide data that shows the existing exposure standards are, or are not, achieving an improvement in the incidence of silicosis. The current standard together with the implementation of OHS obligations may have already made significant inroads into the incidence of this disease. The absence of any countervailing evidence would argue for no further Government intervention at this time.*

Recommendation
That responses to the following questions are clearly articulated and addressed in any future draft of the Protocol:

- Where does the Federal Government stand on the issue of air quality? What about the bodies (eg. NOHSC and EPA) that it manages? Requirements from these bodies should be consistent.
- Is there data available on existing extractive industry operations relevant to the proposed draft Protocol?
- Are there credible studies that prove conclusively respirable crystalline silica is a hazard in an environmental sense?
- Have epidemiological studies been conducted which show that the extractive industry creates worse air quality than other industries?
- Is there proof available that the Californian EPA is finding that their clients are complying to their requirements and that it is resulting in improved environmental outcomes?

Conclusion
In order to comply with the obligations contained in the proposed Protocol the industry requires documented field examples from around Australia and overseas of similar business activities and conditions to assist them in better understanding the issues.

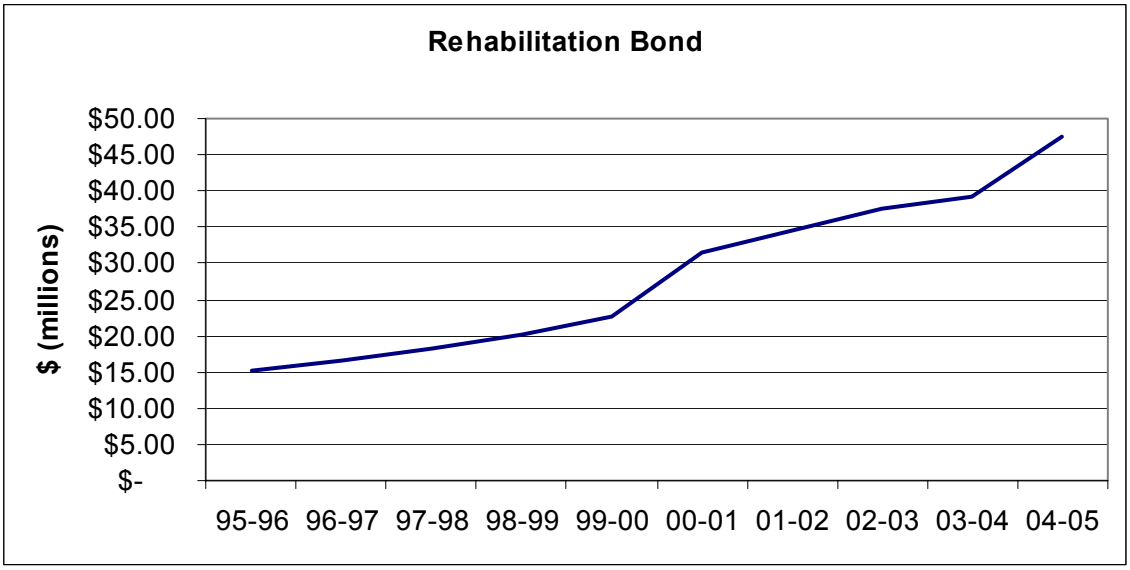
3. THE PROPOSED PROTOCOL

3.1 Need for a Protocol

Given the existence of the consultation draft Protocol and the fact that we will be left obligated to it by the SEPP, it is reasonable to assume that there must be some who believe the extractive industry sector (or its regulator) is not performing to acceptable standards: otherwise there would be no need to propose new criteria and assessment procedures. The CMPA therefore challenge's EPA Victoria and the supporters of the draft Protocol to point to specific instances where the DPI's Work Authorities have been proven to be negligent or non-compliant in effective emission controls.

Indeed, the CMPA argues that the environmental footprint of a Work Authority (the principal regulatory mechanism for the sector) at any stage of its life is much lighter than that of many other industries, especially given the ongoing site rehabilitation requirements. For instance, many Work Authority sites operate virtually unnoticed in locations throughout the State with little negative impact upon the community. These sites support their local community with employment, sponsorship of local clubs and organisations, and provide the community with the ability to purchase low cost construction materials.

The following graph shows the increasing level of rehabilitation bond commitment provided by the extractive industry sector. This demonstrates an ongoing commitment to ensuring sites are environmentally rehabilitated both during the life of the extractive operation and following completion of operations. It must be understood, however, that the ever increasing rehabilitation bond activity (as illustrated by the upward trend in the graph) is not sustainable in our sector.



It is recognised that there was a time, prior to the development of the *Extractive Industries Development Act 1995* when the construction materials sector was seen as a relatively poor performer in relation to environmental outcomes. However, it is important to recognise that over the last 11 years, and more markedly in recent years, there has been a noticeable, continuous improvement in environmental outcomes from the sector with the advent of new technology, the increased OHS requirements (which in turn positively affect environmental outcomes), and the increased knowledge of these issues by Work Authority holders. The same can be said of other industries as well.

This, we feel, is in large part due to the evolutionary approach adopted by the DPI in managing the Work Authority process on a micro basis and the diligent participation of the owner, manager and employee. Since this time, industry and the DPI have taken on a program of education of industry, presentation of informative and accessible information and the provision of assistance to industry.

Prior to commencing any program of increased regulation or monitoring, it is essential that EPA Victoria supplies the industry with conclusive, scientific studies identifying what effect, if any, the operations of Work Authorities are having upon the local environment and the community at large. Any such studies would need to take into account the effect of external emission sources such as unsealed local roads, major civil works and local, infrequent events.

Such information will assist industry in understanding the basis for any required change. Undertaken in a spirit of cooperation and presented with this information, the Association is confident of broad acceptance and compliance.

Accurate Identification of Sites

When considering the impact of the site, issues other than simply tonnage need to be taken into account. A case by case basis assessment of whether emission levels can be affected is required. The proposed criteria overlook many factors which are known to affect the level of environmental emissions including:

- *Stockpiles* (i.e. area, wet/dry/chemically treated, covered/uncovered). Increased tonnage does not necessarily mean higher tonnage. It may be due to imbalances in production, collapse in specific markets, imbalance of crushers to sales requirements, and resource characteristics;
- *Overburden requirements of the site and the need to stockpile this overburden to meet native vegetation requirements.* This can be affected by the fact that a site can have a large depth of overburden covering a resource, or that it may be very shallow with single flow resources that need to remain exposed to assist in the blending process (i.e. clay pits, some basalt flows);
- *Buffer zones* (i.e. vegetation level). Buffers may be affected by the tree density more so than the density and position of the resource topographically. With a suitable buffer zone to collect any environmental emissions, the tonnage may not have much impact;
- *Processing systems* (i.e. wet/dry). It could be more about the positioning of the plant, maintenance protocols, the containment and suppression systems undertaken to manage emissions than the rated capacity and the actual output of the actual process;
- *Extraction area* (i.e. active/inactive faces, quarry face working heights, geography, topography, area of haul roads exposed, tonnage of material moving off site by road or rail);
- *Geological properties of the material* (i.e. ability of particulate to travel, if the deposit is in a flow or massive, if the material is pumped with water or stripped with scrapers or drilled and blasted, etc.); and
- *Residential Interface* (i.e. where residents are located, density of housing, distance of residents from final working boundaries).

It is therefore possible for instance, for a high tonnage output, wet processing sand operation located in an urban setting, with the resource under water, and a just-in-time processing philosophy to be classified as a Level 1 risk simply due to its tonnage. In this case there is no justifiable reason for imposing a Protocol requirement on this activity.

This situation is clearly undesirable, however could easily occur if the current criteria are maintained.

Moreover, there are some instances in industry where it is almost impossible to avoid temporarily breaching an air quality standard. For example, on Total Fire Ban days when typically high winds and dry conditions are evident, emissions from haulage of material from a quarry (and indeed from local traffic) may cause readings of levels to be far greater than average. While water control measures are used constantly in quarries throughout the year at extensive cost, on such occasions no amount of wetting will contain dust. The number of fire ban days per year is variable but can be very high. As a case in point, the summer of 1966/67 produced in excess of 25 total fire ban days. It is suggested that it is unreasonable for dust emission levels on these occasions to be included as breaches.

Community Needs

The Association is interested in how the community's attitude to air quality has been assessed. For example, were surveys carried out and if so, were the questions framed to allow a balanced and informed response? It is noted that very few people have attended community meetings during the public consultation and briefing process that has just been completed. It is the CMPA's opinion that the community's interest is more often highlighted in the planning process and is used as one of the many tools to prevent the development of Work Authorities. How then are community concerns being elicited?

Existing Mechanisms for Managing Industry

Typically, each regulator takes a narrow view of regulation. On the other hand those that must comply need to take a more holistic approach due to the direct costs of compliance. Overlapping and duplicating regulation needs to be avoided wherever possible and the advances achieved through compliance need to be recognised.

The results of OHS legislation should again be considered here. For example, the *OHS Act 1985 and OHS Act 2004* are now showing quite significant results in terms of employer's attitudes to the health of employees including the need to deal with dust and other harmful air carried pollutants.

The process of a Work Authority and Planning Permit go hand in hand. The latter is sought once the DPI has indicated acceptance of an applicant's Work Plan (part of the Work Authority application). It is therefore more appropriate that any requirements for air quality management are factored into the Work Plan rather than being part of the latter process, the Planning Permit.

Inclusion of Other Related Work Sites

The CMPA is aware of a number of non-extractive industry work sites that carry out crushing of recycled asphalt, concrete and other masonry products. It is estimated that production from these sites could be in excess of 2.5 million tonnes annually.

Separation of Mining

The Association is concerned that within the draft Protocol issues such as arsenic, cyanide, heavy metals and other such substances are not associated with the work of its members. The linkage of these substances to extractive industries make it more difficult for our industry to work with the local communities. We have evidence of accusations of members applying for a Work Authority with a basalt resource being drawn into answering questions in relation to arsenic, cyanide, heavy metals and other such substances. Clearly this is not assisting our sector at all.

Recommendation

Prior to commencing any program of increased regulation or monitoring, it is essential that EPA Victoria:

- Reviews the DSE *VPP Practice note – Extractive Industry Proposals - April 2006*, so that it fully understands the degree of complexity of applying for a Work Authority;
- Seek from the DPI and subsequently review the *Trigger for Work Plan Variation* and *Checklist for Work Plans*, both presently under development;
- List those specific instances of Work Authorities that have been identified as causing excessive emissions and carry out audits to pinpoint emission hot spots. From this, agreed outcomes can be set and supplied to industry to better understand where improvement is required;
- Conduct case studies of the sites of CMPA's members so that all parties better understand the issues and outcomes that need to be better managed. The CMPA offered cooperation in this in meetings with EPA Victoria in 2000 and again in 2006;
- In the event that a Protocol be implemented, that a standard tool is utilised in establishing any perceived risks to ensure that all hazards are taken into account when developing the Work Plan and Rehabilitation Plan;
- In the event that a Protocol be implemented, that clearly articulated directions are provided with the Protocol to assist local councils in discharging their duties without leaving them with additional avenues to complicate or refer Work Authority applications to VCAT;
- The Protocol needs to include like type activities and remove dissimilar activities;
- Any protocol set for determining the level of assessment required needs to take into consideration its potential effect upon the Work Authority application process (in terms of both timeframe and cost) and the relevance to day-to-day operations; and
- The model for recording must take into account fluctuations due to unseasonal environmental conditions.

Conclusion

It is apparent from discussions with the EPA Victoria representative and from the draft consultation Protocol that no conclusive data is available to justify any increased management of air quality specifically in relation to the extractive industry. This absence of justification for the Protocol draws the Association to question why its members should embrace any proposed change especially since it will force extractive activities away from their markets and create a more complex set of barriers for entry in the future.

3.2 Anti-Competitive Impacts - Limitations on Growth

By specifying criteria for determining the level of assessment required, the draft Protocol will limit many operations from expanding production should the market desire without massively expensive and time consuming studies. Based on initial investigations, the actual dollar cost of such studies will not vary in line with tonnage. This results in operations at the lower end of the defined levels being placed with a far greater obligation per tonne than larger sites.

There are two components to be taken into account when trying to establish the impact that this Protocol will have upon the industry. The first is the entry obligations and the second being the on-going compliance obligations.

The entry obligations as we understand them, potentially consisting of air shed monitoring and modelling, can cost in the vicinity of $200,000 in the case of Level 1 and Level 2 assessments assuming no EPA data is available (or $60,000 if data is available).

On-going obligations have been estimated as ranging between $25,000 and $35,000 per year, although we understand that there will be an additional expenditure in the first year for silica based resources in the range of $26,000.

For a site utilising a silica based resource producing approximately 100,000 tonnes per year, this will put them at a disadvantage of up to $0.56/tonne compared to a site producing say 500,000 tonnes per year in a non-silica based resource with a cost of only $0.06/tonne[2].

Predatory Pollution

The draft Protocol suggests that a new Work Authority must ensure that the cumulative impacts of all sources in the local area do not pose a risk to the health and amenity of local residents. This, in turn, promotes a situation whereby mediocrity will prevail as a Work Authority holder has no incentive to improve their site's outcome (even if complying) as their air shed may already be within acceptable limits which, by default, will restrict new entrants from entering the market.

Although the monitoring tools presently available may not allow the monitoring of one site against another, it is essential that energies are directed by Government towards preventing this clearly undesirable situation.

Sterilisation of Required Resources

It seems from the Association's point of view that an underlying purpose of the draft Protocol may reflect pressures being generated from the planning process and being brought to bear upon EPA Victoria and others to provide quantifiable data to produce improved environmental outcomes.

As noted in the CMPA's submission to the DPI's Melbourne's 2030 study, some of the CMPA's members are aware that their councils have publicly stated their support for the removal of the extractive industries from their municipalities. In this environment how will problems associated with local area monitoring be resolved? That is, what will stop the general community attitude toward the extractive industry acting to unfairly penalise the industry? Will all participants be subject to equal scrutiny?

Recommendation

- That any direction undertaken by EPA Victoria addresses the impact they will have upon the whole sector to industry's satisfaction.

[2] Case 1 – ($30,000 + $26,000)/100000 Case 2 – $30,000/500,000

Conclusion
Industry is applying for Work Authorities at ever increasing distances from their markets as a result of the range of impediments being placed upon them in the planning application and appeals process. As evidenced to date, there has not been a new Work Authority approved in the Melbourne metropolitan area in the last 13 years. This gradual relocation of the industry to outer areas while still requiring the product to be delivered to urban areas has significant transport related impacts.

The effect of this movement upon greenhouse gas emissions and fuel usage, for example, is detailed below. That is, by increasing cartage by just 15kms, an additional 35,000 $CO_{2\text{-}e}$ of greenhouses gases would be released into the environment.

Estimation	
Present Situation	
Number of Transport Movements:	1.7 million/year
Distance Travelled:	59 million kms
Fuel Expense:	$40 million
Greenhouse Gases:	**79,000t CO_2-e**

Estimation	
Situation with Increased 15 kms per Trip	
Number of Transport Movements:	1.7 million/year
Distance Travelled:	84.5 million kms
Fuel Expense:	$58 million
Greenhouse Gases:	**114,000t CO_2-e**

3.3 Increased Regulatory Burdens and Compliance Costs

SEPPs are just one of a number of legislative instruments (many of which can potentially impose significant costs) that are not statutory rules according to the definition in the *Subordinate Legislation Act 1994* and are not subject to the requirement for a Regulatory Impact Statement (RIS). Policy Impact Assessments (PIA) (which are required to be prepared for SEPPs as set out in the Environment Protection Act) share a number of similarities with RISs.

Whether or not this particular policy proposal requires a PIA under the Environment Protection Act is unclear to the Association. However, the objective of the RIS process is to ensure that in considering regulatory action all costs and benefits are identified so that informed decisions can be made. Why then were those present at the meeting with the EPA Victoria representative on 4 August threatened with the statement, "If you do not accept this Protocol, the exemption for the industry will be removed and the SEPP will apply"? We need to understand what this would mean.

Based on a preliminary costing only[3], it is estimated that the annual financial impact of meeting the draft Protocol's requirements for one Work Authority holder comprises four elements:

- 12 months air shed monitoring in advance of an application;
- Modelling of application into above data;
- Initial 12 months operational monitoring;
- On-going monitoring;
- Cost of systems to manage and report.

[3] This is an unproven science in its infancy with only limited information available both through the State and indeed the world. Examples can only be drawn from a small number of extractive industry sites that have been subject to such testing, and there is a great deal of variation between sites distorting cost estimations.

The following questions arise:

- How can EPA Victoria carry out major policy development of this nature without having a full financial impact statement undertaken? Moreover, has the impact of the draft Protocol factored in additional greenhouse gases and the inevitable, increased deterioration of public infrastructure as our industry is forced into regional Victoria?
- How will modelling and monitoring systems result in the cost-effective reduction of air emissions by the sector? Would not more industry action achieve this at a more cost effective and administratively effective means for both Government and Work Authorities holders?
- Does EPA Victoria support the potential importation of construction materials from Asian nations as the regulatory burden upon the State's Work Authorities reaches breaking point?

It should be recognised that the impact of the proposed Protocol will be much greater for small businesses than bigger businesses as identified in section 3.2. This is contrary to the State Government's small business policy.

As Work Authority variations and extensions, and requests for EPA discharge licenses will, over time, be drawn into the process outlined in the proposed Protocol, it is essential to have clearly delineated areas and factual data presented to the industry before it can agree to further obligations and accompanying costs.

Recommendations

- That EPA Victoria recommends to Government, in addressing its commitment to reduce the regulatory burden on business, that the RIS process is applied to SEPPs and it's supporting PEM as a matter of urgency.
- That increased or new regulatory burdens in the extractive industry sector are used as a last resort and that much more effort is put towards addressing issues through assisting Work Authority holders in managing environmental dust emissions in their:
  a. Work Plans (systems of management);
  b. Capital expenditure plans (suppression and collection items);
  c. Education (vocational training); and
  d. Regulation (regular regulatory site visits)

  These means of primary prevention allows industry to better manage their scarce resources to the optimum.
- That EPA Victoria articulates to the CMPA what the impact of the removal of the industry wide exemption from the SEPP would be.
- That minimum industry practice is specified, rather than demand 'Best Practice' and 'Maximum Extent Achievable' as these two latter terms imply that if everyone has achieved that level that it is no longer the 'best' practice.

Conclusion

The regulator needs to more clearly model the financial impact of its draft Protocols within its own environment before it places something in the market which places those that the changes will affect under undue stress.

3.4 Technical and Other Issues

Although the CMPA does not purport to be a technical authority on environmental monitoring, a number of concerns and queries have been raised by our members that need to be clarified and addressed prior to the proposed Protocol being implemented.

Measuring Issues
The following concerns need to be clearly addressed in any future draft of the Protocol:

- What time period do PM_{10} and $PM_{2.5}$ emissions from Work Authorities remain in the local air shed? How does this compare to other pollutants?
- What error levels are present when conducting such monitoring? What percentage of results is inconclusive? It is essential that these are minimised to prevent potentially wasteful testing.
- Are there a number of studies which prove conclusively that respirable crystalline silica is able to be monitored as a $PM_{2.5}$ fraction? What are the error levels and how many tests give inconclusive results? What is the cost of such monitoring and analysis?
- Have the limitations of the HAZplume software been taken into account? How so? Does it take into account the fact that Work Authorities do not operate 24 hours per day?
- Where should monitoring occur? How many units are required for monitoring? For instance, will it mean that all assessment criteria are measured from the nearest residence? Or will it mean that testing needs to be conducted at a number of points?
- Why are worst-case scenarios used? Does this exclude days when a neighbour's activities reduced air quality, or when natural conditions negatively affect results (i.e. bush fire, dust storm, gale force winds)?
- How often would a site have to re-present modelling data?

Management of Non Compliance
The following concerns need to be clearly addressed in any future draft of the Protocol:

- What will the consequence be for sites that do not meet ongoing monitoring requirements?
- Should the monitoring requirements be aligned to performance? (I.e. if you achieve results well under the limitation, why continue monitoring?)
- How will disputes be managed?

Great care needs to be given to monitoring and compliance in the area of potential disputation and litigation. Any disputation about air quality levels will most likely require the use of sophisticated and very costly equipment. As air quality matters are community-wide matters it can be argued that disputation costs should be met by the community itself especially where individual organisations have abided by minimum industry standards.

Governance

The Consultation Draft requires that submissions be directed to Dr Denison, the principal driver of this issue in EPA Victoria. It is of concern to the CMPA that such an important issue as public consultation with proposed new standards should be subject to such a 'closed' process. Proper governance arrangements and processes for other Government activities, releasing of tender documents for example, are subject to an independent contact process that ensures accountability, fairness, scrutiny and equal consideration of all contributors (be it the Protocol's driver or industry). Such a process is appropriate for consultation with the public especially where contradictory views are anticipated.

Recommendation

- That the technical questions raised by industry are clearly answered to their satisfaction before any further actions occur.

Conclusion

Questions asked by industry and its providers are clearly highlighting the need for much more knowledge to be placed into the industry to assist them in better managing their businesses. It is also clear that as there are so many questions arising from the draft Protocol that EPA Victoria has not clearly and comprehensively promulgated a sound case for reform.

4. VOCATIONAL TRAINING

Vocational training and continual self-improvement within the workforce of the CMPA members has been identified as a principle ingredient in improving profitability and environmental outcomes. To bring about this outcome there are five key areas that the Association has been fostering and developing, namely:

1. That the industry, including managers and employees, desires to participate;
2. That a committed regulator offers its support and that its officers articulate in matters pertaining to workforce training;
3. That the sector has a strong training and assessment structure;
4. That an independent review process of Registered Training Organisations is in place to ensure industry's minimum standards are being maintained; and
5. That all participants are fully aware of what support and career pathways are available to them.

The CMPA has struggled to get the desired support to bring such successful outcomes, and if it were not for the commitment of our regulator (the DPI), far less than what we have achieved to date would have occurred.

Over the last five years, the CMPA has facilitated the training and assessment of in excess of 800 industry participants in either the mandatory Certificate II unit of 'Work Safely' or one of several elective units[4] with the assistance of the DPI, Office of the Chief Electrical Inspector, the training provider, and Federal Government (by way of WELL funding support) to bring about a safer workplace. We have consistently found there to be 37% of participants who have difficulties in the areas of language and literacy.

In more recent times, the CMPA has worked tirelessly with our regulator to assist industry in adopting the 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 that training materials are of a suitable level, consulting with Government bodies responsible for training to ensure that it is relevant to industry's needs, and facilitation of units of competency that teach trainees industry best practice. This has seen industry gain a higher degree of language and literacy skills, seen the uptake of vocational education and training into all manner of industry operations from the very small to the very large, and assisted in lifting the standards of industry as a whole, particularly in the area of OHS.

A more effective means of increasing the ability of the extractive industries in relation to environmental outcomes, where demonstrably required, would be through the establishment of a partnership between EPA Victoria (and its supporting authorities) and an appropriate training provider to make available the units of competency concerning environmental outcomes. This would be considerably more effective as it would empower sites to achieve results and would be a much lower financial burden upon businesses. Such units may include:

- Participate in environmental outcomes (from Certificate II)
- Maintain environmental procedures (from Certificate III)
- Supervise dust and noise control (from Certificate IV)
- Implement and monitor environmental policies (from Certificate IV)

[4] Units including 'Conduct Local Risk Control', 'Communicate in the Workplace', 'Perform Basic Cutting and Welding'.

Activities that should be covered are movements of materials, management of disturbed areas, processes available to managing dust emissions, etc.

Recommendation

- That EPA Victoria (or its supporting authorities) form partnerships with individual industry sectors and clearly commit to educational outcomes which integrate all of the resources available and ensure that all people are given equal access, knowledge and support.

Conclusion

An ongoing commitment to our vocational education and self-improvement objectives with support from others but without control by others is needed, as both the employee and employer need to feel they have control of their destiny. Such partnerships result in less confrontation and cost for the Government, employer and employee and, in the long run, produce much better results.

The management of emissions from activities on any Work Authority needs to be built into as many of the training resource units as possible so as to develop a culture of continual improvement.