



2 July 2004

Bob Debus  
Minister for the Environment  
PO Box A290  
SYDNEY SOUTH NSW 1232

Dear Minister

The Australian Environment Business Network (AEBN) has received many complaints and concerns from our members in relation to the shock increase in Load Based Licensing fees for air pollutants via the gazettal of the *Protection of the Environment Operations Amendment (Clean Air) Regulation 2004*.

No member reports that they received more than 7 days notice of the increase. Affected members who have locked in their environmental budget months ago now find they have little left to deal with other non essential environmental protection issues. Actions on beyond compliance issues are likely to suffer directly from this LBL increase resulting in lower environmental outcomes for NSW.

### **Justification for Fee Increase**

AEBN considers the arguments provided in the Department of Environment and Conservation (DEC) letter to the AEBN on environmental grounds are flawed. Industry warned the EPA in 1998, through many submissions, that the Load Based Licensing (LBL) scheme would not drive pollution abatement in air contaminants, as the cost of abatement was too high. If the fees were increased to drive abatement, the outcome would be, in many cases, closure of affected sites and loss of jobs rather than installation of abatement equipment.

The increase in LBL fees will provide most affected companies with just two choices: pay the increase or close operations. Closure of sites, while rare<sup>1</sup>, may yet occur and will result in job losses for NSW. Hence the increase will have an effect of merely raising NSW Government revenue and not result in clear environmental outcomes. Arguing that environmental improvements will result is a poor argument. AEBN believes that these higher fees will not drive Load Reduction Agreements from industry on air pollutants as few if any agreements will result. .

Raising Government revenue is considered the main driver for this fee increase and is supported in DEC's letter sent out to affected licence holders this week, quote:

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<sup>1</sup> A 45-50% increase in the pollutant weightings will be still considered too low for many industries to pursue pollution abatement. As motor vehicles is by far the main source of the LBL targeted contaminants only minimal if any measurable environmental improvements will result from the LBL fee and fewer from the increase.

*As part of the April mini-budget, the Government has resolved to provide a CPI 'catch-up' on the fees, to maintain their effectiveness and to increase Government revenue. The increases have been focused on pollutant weightings for air emissions under the LBL scheme.*

The conclusion that AEBN reaches is that the fee increase was justified to prop up the NSW Government's internal revenue. AEBN sympathises with the DEC's staff following its recent budget cuts following the mini-budget and it believes the fees are more to do with ensuring that the DEC boosts its returned revenue to the NSW Government than actually improving the environmental outcomes for NSW.

### **CPI Increase**

Applying CPI increases to the LBL scheme does not make sense, and the increases are many times higher than any CPI rate. To start with any CPI increase can only apply over 4 years as LBL scheme did not charge fees in its first year. Following this LBL's fees were ramped up from a fee unit of \$35 to \$95 over a 3-year period. The argument for a CPI increase given the history of ramped fee prices increases under the LBL scheme appears nonsensical as each increase was far higher than the CPI adjustment. AEBN considers that an increase of between 45–50% in the pollutant weightings cannot be justified on CPI increases at all as ongoing increases far above CPI have always been part of the LBL scheme.

### **No Scientific Based Consultative Process for Varying Pollutant Weightings**

Adjustments to the pollutant weightings under the POEO (General) Regulation 1999 has been made with no regard to the NSW Government's previous policy on how such changes should be undertaken. The process for changing the pollutant weightings was detailed in the NSW Government *Regulatory Impact Statement: Pollution Control Regulation 1998*. The Regulatory Impact Statement (RIS) says:

*The draft Regulation provides for the weighting of pollutants to ensure that their relative harm is adequately reflected in the fees....*

*A new approach to develop pollutant weightings has been developed through a joint study with the CRC for Waste Management and Pollution Control. The new methodology and resulting weighting values have been developed based on internationally accepted Life Cycle Impact Assessment (LCA) methodology....*

*Instead, they [pollutant weightings] are values that, when applied to current LBL discharges, are expected to produce a set of incentives that reflect the EPA's current policy priorities for discharge reductions from LBL sources. Thus, when major review of the draft Regulation occurs, it will be preferable to re-weight the pollutants based on the group of licensed industries, their discharges and the consequent environmental impacts applicable at the time.*

AEBN considers the regulatory changes to the pollutant weightings amount to a major review of the weightings. While there is an argument that this series of fee increases may to some not be considered a major review of the Regulation, this would be disputed as the increase represents over \$6 million in additional tax on industry. As a consequence, AEBN would consider it a major review of the scientific basis of the LBL scheme and hence the *POEO (General) Regulation* as a whole. The process detailed the RIS for reviewing pollutant weightings should have been followed. Yet this has not happened. AEBN finds industry has not been consulted and the proposed process undertaken for re-weighting the pollutant weightings has not been made public. AEBN doubts that the new methodology was followed or any scientific analysis has been

undertaken at all. Overall the changes to the pollutant weightings appear arbitrary—other than to meet a revenue target.

### **Bypassing of the Regulatory Impact Statement Process**

The issue of compliance with the *Subordinate Legislation Act 1989* (SL Act) also arises. AEBN has been informed by the DEC that no RIS will be submitted to accompany the fee increase as it is considered too small a change to warrant an RIS. AEBN finds it difficult to understand how the amendment regulation can avoid an RIS under Schedule 3 of the SL Act. The question of whether the change constitutes a:

- Matter of a machinery nature;
- Direct amendment; or
- Matter of a savings nature arises.

These are the only means in which section 5 of SL Act can be bypassed. AEBN would like an explanation on how the regulatory change to effect the LBL fee increase complies as an exemption with any of the above.

More recently AEBN received a letter from the DEC indicating that they are reviewing the *Protection of the Environment Operations (Penalty Notices) Regulation 1999*. Of what appears to be a double standard, this review will involve the full RIS process under the SL Act. AEBN finds this is a contradiction in process of reviewing regulations by the DEC. On one hand we have the *Protection of the Environment Operations Amendment (Clean Air) Regulation 2004* which will directly result in about \$8 million impact on industry but is 'exempt' from the RIS process. The other is the review of the *POEO (Penalty Notices) Regulation*, which may result in collecting a few thousand dollars in government revenue, but will be subjected to the full RIS process.

### **Potential Impact of the Change**

AEBN has been receiving many concerned calls from members affected by this change. One company is suggesting that it is looking to cease production if the change is implemented. The DEC has indicated that about \$6 million in additional revenue will be raised. While this sounds small in comparison to the state's budget, it hits a few companies particularly hard. For example, three organisation's LBL fees will increase by over \$1 million each and the top 6 will be paying almost \$6 million more. A few others have to face LBL fees increases over \$500,000 and many more will be paying over \$100,000 extra. So far AEBN estimates that the revenue gain will be closer to \$8 million rather than the predicted \$6 million.

The economic impact of this change appears to have not been thought through and direct job losses are expected to result. Unfortunately this is the result when government acts too quickly in its decision making process and fails to consult, a clumsy result occurs causing social and economic harm.

### **AEBN Recommendations**

AEBN calls on the NSW Government to:

- Delay the amendment of the POEO (General) Regulation 1999 and reschedule it to coincide with the regulation's proposed review next year
- Undertake the new-methodology for re-weighting the pollutants
- Include all of the group of licensed industries affected by the LBL scheme

- Develop a public discussion paper on the proposed changes
- Conduct public hearings and consultation on the proposed changes
- Undertake a full Regulatory Impact Assessment with required public consultation

Essentially we are calling for the usual public consultation process that the DEC (EPA) has used in the past to develop change in environmental regulation.

I can be contacted on 9924 7515 to discuss the matter above in further detail.

Yours sincerely

ANDREW DOIG  
Director  
AUSTRALIAN ENVIRONMENT BUSINESS NETWORK