



8 December 2016

LBL Review

Regulatory Reform and Advice Branch

Environment Protection Authority

PO Box A290, Sydney South NSW 1232

LBL.Review@epa.nsw.gov.au

via email

To whom it may concern,

The Australian Council of Recycling (ACOR) welcomes the opportunity to comment on the load-based licensing (LBL) issues paper.

ACOR is the peak national industry association representing a broad range of organisations within the resource recovery industry. We represent a diverse group of members, including local councils, public and private resource recovery and recyclers with different interests in the design and implementation of the Load Based Licensing ('LBL') scheme. This submission reflects a brief consultation with ACOR members.

Overall, ACOR supports the LBL scheme as it is seen as an incentive for licensees to reduce pollutants to the environment. However, there is concern on the underlying logic of the proposed changes on the LBL scheme. In short, the potential LBL changes may once again see the NSW Environmental Protection Agency (EPA) put more regulatory and financial burden on the larger businesses, where they are expected to do the heavy lifting whilst smaller operators enjoy limited or almost no regulatory observance. This may further exacerbate the compliance gap between the minority (large businesses) and the greater majority of smaller industry participants.

This then may act to further decrease the ability of bona fide recyclers to compete against smaller operators and exporters that do not attract the same regulatory enforcement. This issue has been especially true in the resource recovery and recycling industry sector as a rampant lack of compliance has been used as a mean to achieve successful commercial advantage i.e. cost saving, over regulated and licensed operators.

ACOR is also concerned that the principle of load based licensing – polluter pays, has been somewhat misconstrued in the issues paper according to the ‘anticipations’ of the EPA. For instance, the issues paper concerns itself heavily with PM₁₀ emissions and in fact page 6 provides a graphical representation of the huge effects of mining and electricity generation by comparison to other sources, yet the paper then goes on to mention land use changes in Western Sydney created by population increase, and the need to elevate compliance in those areas. The EPA would of course be aware that Western Sydney is the epicentre of resource recovery operators in NSW and as a result, a very clear inference is drawn that despite emissions being of far greater volume and impact elsewhere, the EPA intends to drive further compliance and regulatory cost into the heart of resource recovery and recycling in NSW.

Further, in the discussion around water discharges the issues paper identifies effects of mining in the creation of salinity issues (page 8). This once again sponsors thought that the greatest effect for LBL impact is in the mining industry yet ACOR is very concerned that the EPA’s focus for LBL will be to approach existing Western Sydney license holders given the EPA’s historical predilection to doing so. This will simply mean that existing licensed resource recovery operators, being the minority of industry participants, and those that generally hold environmental observance far higher than their industry colleagues, will once again be targeted to pay for the environmental harm caused by others.

More generally, ACOR notes that as waste streams become more complex and toxic, more attention must be given to enhance regulatory burden and compliance by the waste generators, not those providing positive externalities for the community through reprocessing and all of co-benefits of recycling.

ACOR does note that the current system also provides a soft touch to deliberate polluters. If you actively disregard environmental controls or community standards for profit, then fines and enforcement rarely match the crime or the negative externality. While we understand the EPA is considering increasing fines, the propensity for the EPA to concentrate the majority of its observance on licenced operators means that these will be primarily levelled at existing bona fide operators, not the large scale wilful polluters across many industries including resource recovery and recycling. ACOR suggests that deterrence against wilful environmental damage may be better dealt with by criminal offence uplift and increased regulatory observance, rather than a market based instrument.

ACOR welcomes the opportunity to contribute to the review of the issues paper and stand ready to advise government following the outcomes of the consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Musgrove', written in a cursive style.

Grant Musgrove

Chief Executive Officer