

The amendment appears to have been enacted in response to the litigation in *Brown v EPA & North Broken Hill Ltd* (unreported, Land & Environment Court, 12 November 1992, Pearlman CJ). In that case, the applicant argued, *inter alia*, that the EPA had failed to comply with Part V of the EP&A Act when renewing the pollution licences for the mill. The Court held that the EPA was bound to comply with Part V, but that in the circumstances of the case, the operation to be licensed was not an "activity".

The Amendment Act was passed on the last sitting day of Parliament prior to the hearing of the appeal from Pearlman J's decision and it must be concluded that the intention of the legislation was to preempt the decision of the Court of Appeal.

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VICTORIA

ACCREDITED LICENSEE SYSTEM UNDER THE ENVIRONMENT PROTECTION ACT 1970

As foreshadowed in the December 1992 issue of AELN, the Environment Protection Authority (EPA) has released a Discussion Paper on establishing an Accredited Licensee System under the *Environment Protection Act 1970*.

The system, if implemented, would involve a form of co-regulation to enable companies who have the managerial and technical capability and the understanding of statutory matters to take greater responsibility for their own environmental performance. The system does not replace the existing licensing framework. It is intended to be available on a voluntary basis to those companies who qualify. The Discussion Paper has been prepared by an EPA/Industry Working Group and outlines the framework for an Accredited Licensee System.

AIMS

The overall aim of this system is environmental improvement through cooperation between industry, government and the community. This aim should deliver the following outcomes:

- Industry should benefit from being given greater scope to manage environmental

performance in the most cost-effective manner. Accredited firms should be more competitive through savings derived from better systems and better use of resources.

- EPA should benefit by being able to better target its resources and programs to poor environmental performers or small businesses that have limited resources to improve their performance.
- The Community should benefit from improved access to information about a company's environmental protection plans and performance and guaranteed dialogue with those companies.

To qualify as an Accredited Licensee, a company must have in place an environmental management system, an environmental audit program and an environmental improvement plan. Each of these is discussed below.

ENVIRONMENTAL MANAGEMENT SYSTEM

An Environmental Management System is like any other Management System in that staff resources and procedures are organised to achieve set outcomes within a budgetary framework. Aspects of a Management System may include policy, objectives, organisational structures, staff responsibilities, training, documented procedures, record keeping, operational control and audit plans. The Discussion Paper recommends that the acceptance of Environmental Management Systems should be based on external accreditation by recognised bodies or against Standards (such as British Standard BS7750) developed specifically for those systems.

ENVIRONMENTAL AUDIT PROGRAM

The discussion Paper notes that Environmental audits can be divided into a number of discrete audit activities. These include a Management System Audit, a Compliance Audit, a Waste Audit, Environmental Risk Audit and an Impact Assessment Audit. The Paper notes that whilst an Environmental Audit Program involving each of these elements is desirable, the completion of only a System Audit and a Compliance Audit would generally be required by the EPA to accredit the audit process. The scope of an audit program would be agreed with the EPA in consultation with the company concerned. The intention is to acknowledge and, if necessary, build upon the existing audit practices.

The Paper recommends that an Approved Environmental Auditor or an expert on the audit team verify the standard of the audit. The Paper recommends that the EPA develop Audit guidelines to assist in the verification.

ENVIRONMENTAL IMPROVEMENT PLAN

An Environment Improvement Plan (EIP) is the primary tool for improving or rehabilitating a site. The plan would incorporate the outcome of the Environmental Audit process. An EIP would vary according to the circumstances and situation of the company concerned. The Paper notes that existing company documents may provide the equivalent of an EIP. It is recommended that the EPA verify the quality of an EIP given the importance of community confidence and the critical nature of the EIP to the overall system. The Paper notes that where a local community was involved in the development of an EIP, the EPA would need to consider community views when endorsing those plans.

ACCREDITATION

The decision-making process for accreditation would involve a licensee applying to the EPA with accompanying documentation verifying the three elements referred to above. If granted, the Accredited Licence would contain the following elements:

- Discharge limits expressed for the site as a whole. Individual discharge limits may be required for significant point sources depending on the ambient environmental quality objectives.
- Submission of an Annual Performance Assessment Report certified by the company's chief executive officer or equivalent.
- Reporting of incidents and breaches.
- Provision of an up-to-date site plan.

WORKS APPROVAL EXEMPTIONS

Given the concern of industry over the time taken for obtaining works approvals, the exemption from that process is expected to be one of the major benefits of the system. It is expected that only major works of an accredited licensee will require a full works approval application. The Paper recommends that the exemption from a works approval be implemented by a notification system for works resulting in discharges within licence limits, and on a case-by-case basis for works

resulting in discharges requiring changes to a licence.

For Accredited Licensees, works approval exemption will not be subject to appeal.

FEE REDUCTIONS

The Paper notes that a reduction in licence fees is fair and reasonable given the reduced level of EPA involvement once the licensee has been accredited, the expenditure incurred by Licensees in the accreditation process, and the anticipated improved environmental performance of accredited companies. The EPA has indicated a fee reduction in the order of 50% of the base fee and 10% of the component fee would be realistic. However, the degree of reduction of licence fees is yet to be resolved.

COMMUNITY CONSULTATION AND PARTICIPATION

The Paper notes that the Accredited Licensee System must build trust between industry, government and the community. It notes that it is essential that Accredited Licensees support "community right-to-know" principles and inform and communicate with the public within an EIP program. Accordingly, Accredited Licensees should have in place systems to:

- Provide accurate and timely responses to community requests.
- Provide pro-active advice and information to operations and plans
- Adopt an "open door" policy of consultation
- Provide opportunities for the community to themselves assess a licensee's performance.

REVIEW

The Paper recommends that a review of a company's Accreditation be undertaken by the EPA every five years except for companies who do not perform as required. It is envisaged that licences would remain substantially unchanged during that time.

TIMETABLE

Before the Accredited Licensee System can be implemented, the following has to occur:

- The Government agreeing to the system
- An assessment by the EPA of industry capability and desire to utilise the system

- Development of necessary legislative and regulatory changes and the drafting of guidelines and procedures to implement the system.
- Submission on Government's Environment Policies.

The Victorian Division recently made a submission to the State Government on its policies with respect to environment, forests, and conservation and land management. To date, the submission has been well-received. Following is a summary of that submission.

ENVIRONMENT

1. The policy should support the Inter governmental Agreement on the Environment (IGAE) and commit the Government to legislate to authorise the National environmental Protection Authority to establish national environmental standards.
2. The Policy should make an unequivocal commitment to the concept of Ecologically Sustainable Development (ESD). The Government should consider amending the Environment Protection Act 1970 to incorporate key ESD principles, as set out in the IGAE.
3. NELA endorses the general commitments to maintain pollution protection measures. The government should give a commitment to adequately resource the Environment Protection Authority (EPA) to achieve this objective.
4. NELA believes the present administration of environmental and planning laws by both the Magistrates Courts and the Administrative Appeals Tribunal is inefficient and counter-productive. The Government should consider establishing a Planning and Environment Court in Victoria similar to such courts now operating in Queensland, New South Wales and soon South Australia.
5. The role of the community in protecting the environment requires more detailed consideration. NELA is of the view that the *Environment Protection Act 1970* should perhaps be amended to allow citizens to undertake civil actions to restrain or remedy a breach of the Act or institute criminal proceedings in certain specified circumstances.
6. NELA considers the present discrepancy between the judicial interpretation of pollution laws in NSW and Victoria to be highly unsatisfactory.

NELA considers the *Environment Protection Act 1970* should be amended to incorporate a statutory defence of honest and reasonable mistake.

FORESTS

1. Whilst the Policy includes valuable initiatives such as proposals to improve forest management, to develop a national forest policy and the development of value adding processes and timber plantations, the Policy is unduly weighted towards reducing regulation of the industry and the promotion of commercial interests. The Policy should reflect a balanced strategic plan involving both sound management and an appropriate return for the utilisation of the forests.

2. NELA commends the Government's commitment to improve financial management and accountability within the Department of Conservation and Natural Resources (DCNR), but recommends that such performance assessment include other criteria in addition to profit accounting.

3. NELA endorses the Government's recognition of the need for a national forest policy and encourages the Government to develop its policies within the national framework.

4. NELA commends the Policy commitment to managing public forests on a sustainable and high quality basis and to completing a forest inventory, and trusts that adequate funding will be available and that de-regulation will only proceed if there is clear community benefit.

5. Resource Security for the wood products industry can be best obtained by using and enlarging the plantation and agroforestry resource base.

6. NELA joins the Government in recognising the need for adding value to timber.

7. NELA agrees that plantations are a vital part of forest management, but recommends that plantations proceed without unnecessarily compromising Government commercial interests or utilising native forest.

CONSERVATION AND LAND MANAGEMENT

1. The development of management plans for our National Parks should involve consultation with concerned community groups.