for Melbourne, completion of the Air Monitoring Network Review and commencement of implementation;

* Development of Best Practice Environmental Management Guidelines for fuel storage, dry cleaning and other priority industries;
* Development of guidelines for the biological assessment of ecological impact of coastal outfall discharges;
* Publishing a status report on water quality trends in the freshwater environment in Victoria; and
* Release of a draft SEPP for land contaminated by industrial chemicals.

In addition 10 of the 62 activities are identified as "priority actions" which the EPA has stated it intends to deliver in 1996/97. These priority actions are:

1 Development of a management plan for the Port Phillip air shed;
2 Facilitation of a major strategy for the protection of Western Port including a review of the relevant State Environment Protection Policy (SEPP "Waters of Western Port");
3 Recommendation of new SEPPs for the Yarra, Port Phillip Bay and Central Gippsland catchments and a SEPP for groundwater;
4 Recommendation of amendments to Part IX of the *Environment Protection Act* 1970 to give effect to the Victorian Government's policy to merge the Recycling and Resource Recovery Council with the Waste Management Council;
5 Implementation of a State Litter Reduction Strategy;
6 Review of the Industrial Waste Strategy (see also Victorian Recent Developments Section in AELN No. 2/1996);
7 Development of and support for the Cleaner Production Partnership program with industry;
8 Development of a community awareness communications strategy;
9 Assumption of EPA's new responsibilities for managing the *Pollution of Waters by Oil and Noxious Substances Act* 1986 (see also Victorian Recent Developments Section in AELN No. 2/1996); and
10 Strong support for the activities of the NEPC.

Dangerous Goods

The existing definition of "dangerous goods" in the *Dangerous Goods Act* 1986 has been replaced by the definition contained in the Australian Code for the Transport of Dangerous Goods by Road and Rail. Corresponding amendments have been also been made to the *Dangerous Goods (Liquified Gases Transfer) Regulations* 1987, the *Dangerous Goods (Storage and Handling) Regulations* 1989 and the *Dangerous Goods (Transport) Regulations* 1987. The legislation is the first step towards adoption of the new Commonwealth dangerous goods transport regime. The *Road Transport (Dangerous Goods) Act* 1995 (Vic), which adopts the *Road Transport Reform (Dangerous Goods) Act* 1995 (Cth), is expected to come into force in November this year.

Draft hazardous substances regulations are due to be released for public comment early next year. The regulations will be based on the model regulations produced by Worksafe Australia. (Hazardous substances are substances that present a lower risk to humans and the environment than "dangerous goods" but still require some form of regulation). The draft regulations were due out in October this year however, with the transfer of both dangerous goods and hazardous substances regulation from the Health and Safety Organisation of the Department of Business and Employment to the Victorian WorkCover Authority, work on the draft regulations has been suspended until next year.

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WESTERN AUSTRALIA

The *Environmental Protection Act* 1986 (WA) ("*EP Act*") has recently been amended by the *Planning Legislation Amendment Act* 1996. Amendments to the *EP Act* had been foreshadowed for some time and were assented to on July 11, 1996.

Essentially, the amendments to the Act create a system whereby planning schemes and scheme amendments are assessed by the Environmental Protection Authority and any proposals under a scheme already assessed are not separately considered unless the Environmental Protection Authority did not, when it assessed the scheme to which the proposal relates, have sufficient scientific or technical information to enable it to assess the environmental issues raised by that proposal.

Amendments have also been introduced in relation to Environmental Protection Policies providing a mechanism for resolving inconsistencies between approved Environmental Protection Policies and schemes which have been through the environmental impact assessment process.

Amendments to other Western Australian planning

Acts have also been introduced to dove tail with these changes. The practical effect of these changes will be the subject of subsequent review in the Australian Environmental Law News.

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Coastal Waters Alliance of Western Australia Incorporated v Environmental Protection Authority and Anor

Coastal Waters Alliance of Western Australia Incorporated v the Environmental Protection Authority and Anor [1] has confirmed the primacy of the environment in the Western Australian EPA's deliberations, and also legitimized the consideration of those social factors directly related to that environment.

The case centres around a proposal by the third party, Cockburn Cement Limited, to dredge shell sand from Success Bank, a coastal area popular with recreational users. Under WA legislation, Cockburn Cement is required to submit a Dredging and Management Plan to the Minister for Resource Development every two years setting out its environmental strategies.

In 1993 the Plan was subjected to a statutory environmental impact assessment under the *Environmental Protection Act* 1986 *(EPAct)*. Under s 44(1) of the *EPAct* the EPA must consider environmental factors relevant to that proposal, and the conditions and procedures to which the implementation of a proposal should be subject. The resulting EPA assessment of Cockburn Cement - (Bulletin 739) - considered both economic and environmental factors[2]. The EPA advised that if the proposal is implemented in a way which accommodates both these factors, then the implementation will be "environmentally acceptable".

A broad coalition of conservation, fishing, scientific, boating and community groups within the Cockburn Sound region, was formed to oppose Cockburn Cement's assessment. Coastal Waters' Alliance challenged the validity of Bulletin 739 on the basis that the EPA acted ultra vires in considering non-environmental factors in its decision to approve the dredging, and further claimed that the Minister was unable to decide lawfully on Cockburn Cement's proposal based on invalid advice by the EPA.

Notwithstanding that the *EPAct's* central tenet is the protection of the environment, the two tiered definition of environment found therein provides for the inclusion of social factors. The leading judgment, given by Rowland J., considered the extent to which the EPA is assigned with the task of balancing possible economic gain against possible environmental detriments.[3] The judgment considers the EPA's mandate firstly in relation to the impacts which may be assessed, and secondly the court found the range of impacted peoples who may be validly considered in its deliberations. In determining the former, the court found "environment" is delimited in that it relates to surroundings and, as such, requires a reference to a place. In relation to the second matter the court found "man" to pertain to the community rather than the person initiating the proposed development. The judgment therefore restricted EPA consideration to the affected community. Social impacts upon the proponent

> "are deemed to be no more than the results of the failure to obtain approval because of the impact upon the environment...[T]hat is not an environmental impact. Rather, it is a consequence of not being given permission to damage the environment."

The essence of the judgment is the formal validation of the paramountcy of the environment in all EPA deliberations. It is worth noting that, despite some suggestions to the contrary, *Coastal Waters Alliance v EPA* does not prevent the Authority from considering economic and broader social impacts.[4] Rather, these impacts are relevant only as they relate to the physical area involved in the proposal. Thus it was held that the EPA, in purporting to resolve the conflict between the need for resources and the protection of the environment, had exceeded its statutory powers and functions. The court stated that the report was "fundamentally flawed in that it attempted to find a political or commercial compromise". As such the judgment sets a precedent for the exclusion of broader economic or political matters in EPA decision-making leaving these, as appropriate, for consideration by the Minister. The second claim also was successfully upheld: the Ministerial Statement was invalidated due to its reliance upon information within the EPA's ultra vires Report and Recommendations.

Coastal Waters Alliance v EPA is only the most recent case in a relative flurry of environmental public interest litigation in WA.[5] The *EPAct's* innovative appeals processes were expressly designed to avoid judicial

1 Unreported, Supreme Court, WA, 26 March 1996, hereafter *"Coastal Waters Alliance v EPA"*.

2 Environmental Protection Authority, Proposed short-term continuation of dredging of shell sand on Success Bank Oen Anchorage; and proposed strategy to address the long-term environmental issus of shell sand dredging: EPA Report and Recommendations - Bulletin 739 (Environmental Protection Authority, Perth, 1994)

3 *Phosphate Co-operative Co of Australia Ltd v Environmental Protection Authority of Victoria*, per StephenJ

4 The West Australian, 2 April 1996

5 *Chappel v the Environmental Protection Authority & Ors* (unreported, Supreme Court, WA, 27 April 1996) (see A Gardner "Recent Developments" (1995) 2 AELN 39) and *Bridgetown Greenbushes Friends of the Forest Inc & Anor v The Executive Director of Conservation and Land Management & Ors* (unreported Supreme Court, WA, 9 August 1995) (see A Gardner "Rec nt Developments" (1995) 3 AELN 33).

involvement.[6] Litigation of the past year suggests that third party plaintiffs are becoming increasingly dissatisfied with these appeals processes and more willing to seek relief through the courts.

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A New Pollution Licensing System For Western Australia

The Department of Environmental Protection has introduced a new system of industry licensing to recognise the increased willingness of some companies to take responsibility for their environmental performance. The key element of the new approach is the introduction of best practice licences incorporating the best practice management approach with audited self management.

The main elements of the existing approach were the use of regulatory licences defining the pollution control requirements for prescribed premises and licence fees for industry based on production throughput. Coupled with this were punitive responses such as fines, abatement notices and gaol sentences for non-compliance with licence conditions or for pollution offences. Although effective for controlling the levels of pollution, it did not provide an incentive for improved environmental performance or for industry to take on environmental responsibility.

The new system introduces the following:

* Best practice licences: licences designed for industries committed to best practice environmental management where the responsibility and approach to meeting environmental performance requirements is determined by industry but with the government overseeing the effectiveness and independence of the process.
* Codes of practice: documents prepared by government indicating good environmental practice for adoption by industries which do not have the resources to develop best environmental management practices for themselves but are willing to adopt the operations identified in codes. Registration of individual companies will provide the mechanism for this change.
* Monitored licences: licences specifying the main waste streams from an industry to be monitored according to agreed and independently reviewed procedures. Licence fees will be based on the measured pollutant load.
* Regulatory licences: licences prescribing pollution control and operational requirements for industry and subject to inspection by government.
* Load based licence fees: it is proposed to base licence fees on pollution load in order to encourage reduction in waste by allowing for fee savings.
* Multiple responses: rather than relying on punitive responses, there will be a mixture of incentives for good environmental performance and penalties for poor environmental performance.

The new licensing system is part of a broader approach to environmental management by the Department of Environmental Protection. This broader approach includes:

* the management of environmental systems by controlling discharges to meet ambient environmental quality criteria for airsheds, watersheds and other receiving environments;
* project life cycle management; and
* variable responses by government to industry whereby there are incentives for environmental performance, support for those seeking assistance with pollution problems but penalties for wilful polluters.

For industry to be awarded a best practice licence, it is proposed the following items will need to be in place:

* an environmental policy; a general statement of the company's commitment to environmental performance and improvement of that performance;
* clearly defined environmental performance objectives; statements defining the criteria against which environmental performance can be measured;
* an environmental management manual;
* an environmental audit plan;
* an environmental improvement plan;
* an environmental responsibility chart; and
* a system of control and verification of environmental actions

The first step in introducing these changes is a revision of the Prescribed Premises Schedule in the *Environmental Protection Regulation* 1987. Entitled the *Environmental Protection Amendment Regulations* (No.3) 1996, this came into effect on the October 1, 1996.

The amendment repeals Regulation 4 and 5 of the principal regulations and substitutes a new prescribed premises list, a system of registration of premises, and a new basis for determination for works approval and licence fees. In addition, there is a method to determine the amount to be charged, a maximum fee, provisions for refunds and reduced fees.

6 P Johnston, "Law the Servant of Environmental Hope", in Newman, Neville and Duxbury, Case Studies in Environmental Hope (Environmental Protection Authority, Perth, 1988), p 144.

The new Schedule 1 sets out the prescribed premises by description and capacity. Schedule 2 sets out the premises which may be subject to registration. Schedule 4 lists the licence fee payable, including both the premises component and the discharge component.

Details of the scheme are contained in "Achieving Best Practice Environmental Management" Department of Environmental Protection, Perth, Western Australia, August 1996.

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National Environment Protection Council (WA) Bill 1996

In late 1995, the Western Australian Government agreed to participate in the National Environment Protection Council, reversing its earlier decision not to participate. The *National Environment Protection Council (Western Australia) Bill* 1996, which is in the same form as the Bill passed by all other Australian jurisdictions, was tabled in the Legislative Council on May 1 this year and passed by that Chamber on August 28 when it was transmitted to the Legislative Assembly. The second reading of the Bill in the Assembly was on August 29.

Since July, the Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements has been conducting a review of the Bill and is due to table its report by October 31 this year. The Committee is particularly concerned about the process by which such uniform legislation is brought to State Parliament, though it appears that they recognize that they have a limited opportunity to review in detail the substance of the Bill's provisions. It is possible that the Assembly will pass the Bill in October, and quite likely that it will be passed by November, if the Assembly has not been dissolved by that time for an early State election.

In the meantime, from accounts I have received from the Western Australian Department of Environmental Protection, Western Australia has, through its Minister for the Environment, been an active and effective member of the NEPC; albeit a member with observer status only.

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NEW ZEALAND

Working Group on CO2 Policy Reports

A joint public/private sector working Group to review aspects of New Zealand's current climate change policy, including the possible introduction of a carbon tax or alternative economic instruments was established in August last year. The keenly awaited report of the Working Group was released on June 20, 1996.

The Group has recommended a mix of tradeable carbon emission certificates (TCC's) and a carbon tax to cap TCC prices. Under the TCC scheme, emitters of CO2 would be able to buy certificates allowing them to emit CO2, while planters of trees, which absorb CO2, are rewarded with certificates which they can sell.

The proposed carbon charge would effectively place an upper limit on certificate prices at a cap determined by the Government. Certificates would be expected to trade below the cap if the costs are lower than payment of the carbon charge. The report recommends these economic instruments should be phased in over time prior to 2000, but broadly in line with the introduction of comparable measures by other developed countries so that New Zealand does not lose its trade competitiveness.

Potentially, TCCs and carbon taxes could have major economic impacts domestically and on New Zealand's trading ability overseas. The full effects of this sort of economic intervention are poorly understood at present. Tradeable certificates may give certainty on the volume of reduction, but not on economic costs, which may be very high. Carbon charges on the other hand, may give certainty about the cost of reducing emissions, but not on the volume of reductions. The challenge in designing a workable and fair allocation and administration system is also formidable.

The Ministry for the Environment will conduct a series of consultation seminars over the next few months to assist the public to understand the issues. Written submissions responding to the discussion document will be received by the Ministry for the Environment until November 1, 1996. These submissions will be reviewed by officials and the Working Group and will provide a key input into a final report on CO2 policy for the Government in February 1997. It is anticipated that report will in turn form the basis of a major review of the Government's climate change policy.

Resource Management Amendment Act 1996

The *Resource Management Amendment Bill* (No 3) was introduced into Parliament in December 1995. It was reported back from the Planning and Development Select Committee on