

14 April 1999

Dr Neil Byron
Presiding Commissioner
ESD Inquiry, Productivity Commission
Telstra Tower, Level 28
35 Collins Street
MELBOURNE VIC 3000

Dear Dr Byron,

**Inquiry into implementation of ESD by
Commonwealth Departments and Agencies**

Thank you for your visit to the NEPC Service Corporation on Friday 26 March 1999. I believe that the discussions we had were most constructive, and I trust, informative for yourself and Mr Adam Phillips.

As discussed, I was concerned to see several adverse comments about the National Environment Protection Council in your draft report of February 1999, and I accept your apology for not having contacted NEPC to obtain at least a countervailing view. I welcome the opportunity to make a submission to put on record the views of the NEPC Service Corporation. (I should emphasise that these are not necessarily the views of the NEPC itself or NEPC Committee).

I have also attached a copy of a paper I delivered to the Environmental Workshop sponsored by the Minerals Council of Australia in October 1998. The paper briefly outlines the genesis of NEPC, and the (then) current status of NEPM development. The information provided is largely 'process oriented,' and aims to illustrate the extent to which NEPC has developed and enhanced its development processes to involve stakeholders (all spheres of government, industry and the conservation movement) and the public, to facilitate environmental, social and economic inputs.

NEPC also has a significant accountability function through (annual) public reporting on the implementation of National Environment Protection Measures. The requirements for this function are being developed and will be put in place later this year.

Please do not hesitate to contact me should you require further information.

Yours sincerely,

B P Kennedy
Executive Officer
Att.

Intergovernment Agreement on the Environment

As indicated in the attached paper for the Minerals Council, NEPC is a key outcome of the Intergovernmental Agreement on the Environment (IGAE) (1992) which addressed the responsibilities and interests of all spheres of government (Commonwealth, State/Territory and Local) and the accommodation of those interests on a cooperative basis.

Specifically the IGAE aims to facilitate:

- a cooperative national approach to the environment;
- better definition of roles of respective governments;
- reduction in the number of disputes between the Commonwealth and the States and Territories on environmental issues;
- greater certainty of Government and business decision making; and
- better environmental protection.

The IGAE outlines principles of environmental policy, as a basis for ecologically sustainable development. The specific areas of environmental policy and management covered by IGAE include data collection and handling, resource assessment, environmental impact assessment, national environment protection measures (and NEPC), climate change, biological diversity, the national estate, world heritage and nature conservation.

National Environment Protection Council

The objectives and functions of the National Environment Protection Council are outlined in the attached paper.

Further to the comments in the attached paper, it should be emphasised that NEPC is one of the few (perhaps the only) ministerial councils established under legislation in all jurisdictions (National Environment Protection Council Acts). Under that legislation it has the power to make legal instruments (national environment protection measures or NEPMs) which are valid in all participating jurisdictions. NEPC is therefore significantly different to most ministerial councils.

Whilst the Council currently comprises environment ministers from all jurisdictions, each is appointed by their government to represent their government. There is no requirement to appoint a minister from any particular portfolio. This is in direct contrast to most ministerial councils (including ANZECC), which are portfolio based. An important corollary is that each member comes to NEPC with an agreed government (ie cabinet approved) position on critical issues (eg initiation of a new NEPM, making a NEPM). This means that all other relevant government agencies in each jurisdiction (and if appropriate, their ministers) are consulted during the development of a NEPM. Cabinet in some States may take cognisance of the attitude of the peak industry body(ies) in coming to a position on specific NEPMs. Thus significant requirements are placed on members of NEPC to ensure appropriate consultation within their governments.

NEPC Committee comprises the chief executives (or their very senior delegates) of jurisdictional environmental agencies, as well as the NEPC Executive Officer. It is thus akin to standing committees for other ministerial councils.

The NEPC Service Corporation, headed by the NEPC Executive Officer, provides the secretariat to Council and NEPC Committee, as well as a project management function for the development of NEPMs and for ancillary activities.

NEPM Development Processes

Processes for the development of NEPMs have in the past come in for some criticism, some of which is exemplified in the Productivity Commission's draft Report.

The NEPC is a young organisation, and was developing its first NEPMs in 1996 and 1997 (these NEPMs were made by NEPC in the first half of 1998). NEPM development processes were being established simultaneously with the development of the NEPMs themselves, when NEPC was under considerable time pressure to produce outputs.

Commencing with the ambient air quality NEPM, NEPC has inserted a 'discussion paper' phase into the NEPM development process required under the NEPC Act. The process now has:

- A discussion paper phase, in which national consultation with key stakeholders and others is undertaken. A document summarising issues raised and NEPC Committee responses is developed and sent to all who made submissions.
- The issues arising from the above consultation are addressed, as appropriate, in the development of the draft NEPM and Impact Statement. The draft NEPM and Impact Statement undergo extensive consultation with jurisdictional governments prior to final release for public consultation. Again, an extensive national consultation process is established for the draft NEPM, involving keystakeholders and the public.
- Again a summary and response document is prepared, and the draft NEPM finalised (again, with extensive consultation with jurisdictional governments), prior to NEPC making the NEPM. In future, final draft NEPMs will be made available to key stakeholders prior to NEPC giving consideration to making the NEPM.

Review of the NEPM development process

In early 1998, a review of the NEPM development process was instituted by NEPC Committee. Key stakeholders were canvassed. As a result, further improvements have been made to the process.

Consultation

The NEPC consultation protocol has recently been revised, taking the outcomes of the review process into account. The protocol now includes a provision to supply the final draft NEPM, to stakeholders for information prior to NEPC making the NEPM, enhancing the transparency of the process. This protocol has met with the approval of key stakeholders.

Scoping of new NEPMs

A scoping protocol has been developed, which enables key stakeholders to assist NEPC in identifying key issues and directions for specific new NEPMs. This protocol has been praised by key stakeholders.

Impact Statements

An Impact Statement is required by the NEPC Act to accompany each draft NEPM. Section 15 outlines the issues required to be covered by the Impact Statement. The Impact Statement must also meet the requirements of the COAG guidelines, on which the Office of Regulatory Review (ORR) gives advice. NEPC Service Corporation is currently revising its Impact Statement protocol.

Interactions with stakeholders and the public

NEPC considers its interactions with key stakeholders and the public as critical to the development of NEPMs. Complementing the steps in the NEPM development process, NEPC has established a formal structure for NEPM development to facilitate inputs into the process.

For each NEPM:

- A peak national “NGO Advisory Group” is established to advise NEPM Committee on policy issues relating to the development of the NEPM. The NGO Advisory Group will typically comprise representatives of industry, conservation and professional groups who have an interest in the particular NEPM. NEPC funds up to three conservation representatives for each NGO Advisory Group, to facilitate their involvement.
- A Jurisdictional Reference Network is established, comprising one officer from each jurisdictional agency represented on NEPC Committee. The roles of these officers include:
 - ‘whole-of-government’ (inter-agency) consultation on the NEPM;
 - (in most cases) consultation on the NEPM with industry, conservation groups and the public in their jurisdiction;
 - provision of advice on jurisdictional issues with regard to drafts of the discussion paper, the draft NEPM, Impact Statement, and the ‘final’ draft NEPM; as well as on the documents themselves, to the Project Team responsible for developing the NEPM

The Jurisdictional Reference Network acts as an informal conduit for exchange of information between jurisdictions.

Relationships with other Ministerial Councils

There are clear links between the National Environment Protection Council and the Australian and New Zealand Environment and Conservation Council (ANZECC), which comprises environment ministers. Apart from the New Zealand minister, there is currently 100% overlap in membership between NEPC and ANZECC. The Standing Committee on Environment Protection (SCEP) has, with the exception of New Zealand and the Executive Officer, the same membership as NEPC Committee. Other ministerial councils with an interest in the development of some NEPMs include ANZMEC (ambient air quality) and ARMCANZ (water quality). Contact with these councils has to date been on an as needs basis. Further interactions with them are being progressed.

Relationships with Other Bodies

National Health and Medical Research Council

NEPC has a Memorandum of Understanding with the National Health and Medical Research Council (NHMRC).

Several areas in which NEPMs can be made are of interest to health agencies. Thus the project team which developed the ambient air quality NEPM had an NHMRC representative, to ensure appropriate health input. Similarly, in the area of assessment of site contamination, NHMRC jointly published guidelines (with ANZECC) in 1992. NHMRC had subsequently done further work in the area. In the development of a draft NEPM, NHMRC have funded two health experts to be part of the NEPM project team.

Directors of Environmental Health Forum

NEPC Committee has an agreement with the Directors of Environmental Health Forum (DEHF).

DEHF and NHMRC have cooperated extensively with NEPC in the development of the NEPM on the assessment of site contamination. As indicated above, NHMRC have funded two health experts, who have been sourced from state agencies. The role of DEHF should be recognised in this process. In addition, DEHF (through the SA Health Commission) have supplied copyright materials for incorporation into the draft NEPM.

National Road Transport Commission

NEPC has a Memorandum of Understanding with the National Road Transport Commission (whose role is to promote uniform road and vehicle regulation throughout Australia).

Under the MOU a Motor Vehicle Environment Committee (MVEC) has been established, comprising equal representation from the environment (NEPC

Committee) and road transport sectors. The role of MVEC is to ensure that consideration of environmental issues is included in decisions regarding motor vehicles, through advice to NEPC Committee and NRTC. MVEC has developed a strategic plan, which has been supplied to you.

Standards Australia

NEPC is currently developing a Memorandum of Understanding with Standards Australia, as Australian Standards are referenced in some NEPMs. Both NEPC Committee and Standards Australia are keen to put any relationship on to a 'pro-active' footing, so that should there be a need to develop (an) Australian Standard(s) to support a NEPM, Standards Australia can be advised in a timely fashion. Similarly, Standards Australia can advise NEPC Committee of its activities germane to NEPC.

Ecological, social and economic issues

NEPC is required to balance ecological, social and economic issues in considering the initiation, development and making of NEPMs. It does so through the development of discussion papers, impact statements, and ongoing interactions with stakeholders and the public.

Generally, criticisms by industry groups and specific companies of Impact Statements usually relate to the cost side of the cost benefit equation (and usually reflect their own interests in the matters at hand). NEPC has found cost benefit analyses difficult to do, because of the lack of cost data and the difficulties involved in valuing benefits. NEPC now makes a point (especially at the discussion paper phase) of seeking cost data held by industry. To date, no such information has been forthcoming (possibly because of commercial sensitivities).

Given the uncertainties in available information, and sometimes a lack of available information, decisions are made on the basis of incomplete information. The precautionary principle is important in environmental decision making, and enables NEPC to proceed in the absence of complete data sets. For the ambient air quality NEPM, it was proposed in one industry submission that \$50-200 million needed to be spent on further research into air quality issues prior to the making the NEPM. It would be very difficult to justify such a level of spending, when there is, in combination with the precautionary principle, sufficient information available to set appropriate standards. The key is having sufficient information.

There is a need to enhance approaches to cost benefit analysis and NEPC Service Corporation is keen to explore this area in a way that is meaningful in the environmental context.

Comments on Impact Statements

For each Impact Statement, the Office of Regulation Review have advised NEPC Service Corporation that its requirements have been met. In addition, in the report “Regulation and its Review 1997-98,” the Productivity Commission indicated that NEPC’s Impact Statements (together with those produced by some other ministerial councils) “have a good compliance record for all proposals with regulatory implications” (p69).

After NEPMs are made

For some NEPMs, the Jurisdictional Reference Network (or a very similar group) has been transformed into an “Implementation Working Group” after the NEPM has been made. These working groups are able to facilitate common approaches to implementation and to exchange information. This has the beneficial effect of networking amongst jurisdictions, with information about significant development in one jurisdiction flowing through quickly to other jurisdictions. An example of such a development is the GPS tracking system for private liquid waste trucks in Western Australia.

For the Ambient Air Quality NEPM:

- A ‘Peer Review Committee’ has been established to provide guidance in the development of airshed monitoring plans, to assess those plans, and provide advice to the Ministers on the NEPC regarding those plans. The Peer Review Committee includes representatives from jurisdictional governments, conservation groups and industry. The conservation representatives are funded by NEPC to facilitate their participation.
- A Risk Assessment Taskforce has been established to investigate the possible use of risk assessment in the application of existing ambient air quality standards and in the development of new (or review of existing) standards. Again, conservation and industry representatives are included in the Taskforce (and again, NEPC funds the conservation representatives).

Availability of Documentation

Almost all documentation produced by NEPC is available for downloading from its website by stakeholders and the public. This includes documents being made available for consultation, as well as finalised documents. In a recent innovation, all public consultation meetings (locations, dates, venues) have been listed on the website. NEPCs website currently has about 40,000 “hits” per month. These are sourced mainly from Australia but also from overseas.

Implementation and Reporting

NEPC is required under its legislation to report on implementation of NEPMs by the jurisdictions and assess the effectiveness of the NEPMs, on an annual basis. In order to do this, jurisdictions are required to report annually to NEPC on the implementation of NEPMs. This reporting will form an important accountability function for NEPC in its relations with stakeholders.

NEPC Committee is currently developing an implementation reporting protocol which will facilitate reporting by jurisdictions, to facilitate assessment by NEPC. Such reporting will take its place amongst other types of environmental reporting, such as State of the Environment Reporting by jurisdictional governments, the annual reports of environmental agencies and the new legislated environmental reporting requirements for annual reports by Australian companies.

Specific comments on Draft Report

Page 30 – Minerals Council of Australia comments - The nomination of Ministers as members of the NEPC is entirely within the province of each jurisdictional government. As indicated above, significant ‘whole-of-government’ processes in each jurisdiction are initiated during the development of NEPMs. The extent of those processes may vary from one government to another, but this again is entirely dependent on the requirements of each government.

Page 30 – Australian Industry Group quote – NEPC is an outcome of the IGAE, which clearly recognises ESD principles. I have never sighted any official documentation (legislative or otherwise) which states that NEPC is charged with the responsibility of implementing ESD in Australia. As the Draft Report clearly points out, many agencies have a role in implementing ESD.

Page 90 – Comments by Industry Groups – the Draft Report recognises that “a comprehensive assessment and quantification of social, environmental, health or economic impacts is a difficult proposition, due in part to information and data gaps.” The NEPC is cognisant of these difficulties and has, and is, attempting to address them (see above).

Pages 99, 100 – Comment by ANZMEC – the issue of timeframes for comment has been addressed through the addition of the discussion paper stage, greater process transparency generally, and ready availability of documentation.

Page 107 – Comments regarding co-ordination – NEPC processes represent an excellent framework for enhanced co-ordination at jurisdictional level.

Page 108 – (Finding 7.1) – The high degree of transparency in NEPC processes, involving jurisdictional governments, other key stakeholders and the public is a model worthy of consideration by other bodies.

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National Environment Protection Measures

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Prepared for:

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Introduction

The National Environment Protection Council has been established to harmonise approaches to environmental protection across Australia.

There are processes in place to develop national approaches in other areas, for example in public health, occupational health and safety, road transport, the management of dangerous goods, and training, albeit with different mechanisms to that adopted for environmental protection.

The approach adopted for developing national measures by the National Environment Protection Council is probably unique in Australia's history.

Origins of the National Environment Protection Council

The Constitution of Australia is silent on the environment and so responsibility for environmental law rests with the States, which have developed systems to manage their responsibilities for land use, and for protection and conservation of the environment. Over the years, the Commonwealth has exercised its constitutional power to enter into international treaties. Australia is a signatory to several international environmental agreements including the United Nations declaration on the environment, Agenda 21 (an outcome of the United Nations Conference on Environment and Development) and treaties on specific issues such as trade in hazardous wastes. These international developments had (and have) ramifications for national and state environmental management issues.

In the 1980s, the Commonwealth used its constitutional powers associated with foreign investment, exports and corporations to become involved in environmental issues. In particular, the Commonwealth used its foreign investment powers to play a high profile role in the proposed Wesley Vale pulp mill. This intervention caused the states to consider the issue of Commonwealth involvement in environmental protection.

As Pain has indicated

“the political reality was that environmental matters were clearly local, State, national, and international in nature. It was inevitable that the Commonwealth Government would become further involved in environmental issues given the nature of those issues, Commonwealth/State relations in Australia and the context of national policies. The possibility of Commonwealth involvement in these circumstances was considered in all likelihood to be greater. The constitutional realities were that the States had traditionally exercised power in relation to land use in environmental matters. In discharging international environmental obligations the Commonwealth had clear constitutional power to enter into the environmental arena. The Commonwealth had a number of constitutional powers through which it could justify involvement in State environmental issues”.

Intergovernmental Agreement on the Environment

Development of the Intergovernmental Agreement on the Environment was initiated through the then Prime Minister's "New Federation" initiative. A key aim of this initiative was to clarify the roles and responsibilities of the different levels of government on a cooperative basis, not just to ensure better protection of the Australian environment, but also to reduce uncertainty and costs to business, and to minimise market distortions.

This was seen as crucial in the restructuring and internationalisation of the Australian economy which started in the 1980s.

Given the political reality surrounding the negotiations and the constitutional power of the Commonwealth, the aim of the Intergovernmental Agreement on the Environment (IGAE) was to resolve a potential “states rights” versus “national interest” contest, to remove uncertainty between Commonwealth and State governments in responsibilities for environmental management, and to develop a cooperative national approach.

In 1992 the Prime Minister, Premiers, Chief Ministers and the President of the Australian Local Government Association signed the IGAE. This was a watershed in the history of environmental protection in Australia as, for the first time, all governments agreed to a co-ordinated approach - a “code of practice” for managing the environment.

Specifically the IGAE aims to facilitate:

- a co-operative national approach to the environment;
- better definition of roles of respective governments;
- reduction in the number of disputes between the Commonwealth and the States and Territories on environmental issues;
- greater certainty of Government and business decision making; and
- better environmental protection.

A key outcome of the IGAE was the establishment of the National Environment Protection Council and the development of National Environment Protection Measures under the *National Environment Protection Council Acts* passed by all jurisdictions.

The system outlined in the IGAE and the resulting NEPC legislation allows flexibility for the states and territories in implementing the agreed NEPMs - a position of certainty in standard setting, and of flexibility in implementation.

The National Environment Protection Council

The National Environment Protection Council (NEPC) has been established through uniform and complementary Acts in each State, Territory and the Commonwealth. The *National Environment Protection Council Acts* establish the objectives, functions and powers of NEPC. They also set out membership of the NEPC, principles and processes it must follow, and provisions for its administrative support.

The NEPC comprises one minister from the government of each State and Territory of Australia and the Commonwealth. Members of the NEPC are not necessarily environment ministers. The Commonwealth minister chairs NEPC, which makes decisions by two-thirds majority vote. The NEPC's objectives are to:

- give all Australians the benefit of equivalent environment protection wherever they live
- ensure that business decisions are not distorted, and markets are not fragmented, by variations in major environment protection measures between Australian jurisdictions.

Functions of the NEPC

The NEPC has two functions:

- to make National Environment Protection Measures (NEPMs); and
- to assess and report on their implementation and effectiveness in participating jurisdictions.

The purpose of NEPMs is to make sure that the environment across Australia is protected consistently. NEPMs will be framed in terms of outcomes to ensure equivalent environmental quality.

The NEPC will establish an environmental level playing field for both business and the community so that businesses can compete on an equal basis in terms of meeting environmental protection requirements.

The NEPC makes national environment protection measures (NEPMs) which are developed in accordance with the public process set out in the NEPC legislation. This process is being augmented as a result of experience gained to date.

In reporting on the implementation and effectiveness of NEPMs in participating jurisdictions, the NEPC will be able to assess how well these aims are being met.

National Environment Protection Measures

National Environment Protection Measures (NEPMs) are framework-setting legal instruments similar to existing environmental protection policies in some States. They will outline agreed national objectives for protecting particular aspects of the environment.

NEPMs and their components are defined in the NEPC legislation. A NEPM may consist of any combination of goals, standards, protocols and guidelines.

NEPMs may relate to the quality of the ambient environment or to the control of particular pollutants.

NEPMs relating to the quality of the ambient environment

These will target particular segments of the environment - such as air quality, freshwaters, marine waters. NEPMs will set environmental quality goals to ensure that environmental values can be maintained. They may include standards which provide benchmarks for the attainment of goals, protocols for the measurement of standards and guideline programs which may help in the attainment of standards.

NEPMs controlling particular pollutants

These will include NEPMs to control noise and exhaust emissions from motor vehicles, and manage environmentally hazardous wastes and control noise from products and services which are sold nationally. They deal with very specific areas of activity with potentially major environmental implications. These NEPMs will focus on controlling materials and minimising discharges so that pollutant loads, and thus environmental impacts, are minimised.

Issues for which NEPMs may be developed

Specifically, NEPMs may be developed for:

- ambient air quality;
- ambient marine, estuarine and fresh water quality;
- noise where it affects national markets;
- general guidelines for the assessment of site contamination;
- environmental impacts associated with hazardous wastes;
- the reuse and recycling of used materials; and
- motor vehicle noise and emissions (in conjunction with the National Road Transport Commission).

In deciding to initiate work on an NEPM, the National Environment Protection Council must, amongst other things, be cognisant of the following factors for the proposed NEPM:

- consistency with Section 3 of the Intergovernmental Agreement on the Environment;
- environmental, economic and social impacts;
- simplicity, efficiency and effectiveness of administration;
- whether the most effective means of achieving the desired outcomes is by means of a national environment protection standard, goal or guideline or any particular combination;
- the relationship of the NEPM to existing inter-governmental mechanisms;
- relevant international agreements to which Australia is a party; and
- any regional environmental differences in Australia.

In order to achieve national consensus, it is important that, in the first instance, a NEPM should deal with issues:

- that are of high priority;
- that are relatively well understood; and
- for which there is a sound body of recent information.

At its meeting in June 1996, NEPC authorised the initiation of NEPMs for Ambient Air Quality and for the Movement of Hazardous Wastes across Jurisdictional Boundaries, and in November 1996, NEPC agreed to initiate NEPMs for a National Pollutant Inventory (NPI) and for the Assessment of Contaminated Sites. A NEPM for Used Packaging Materials was initiated in November 1997. It is expected that NEPC will consider initiating a NEPM for diesel emissions in 1999.

NEPMs completed

National Pollutant Inventory NEPM

The intent of the National Pollutant Inventory NEPM is to establish a National Pollutant Inventory and provide a basis for its implementation. Information on the emission of pollutants to air, land and water will be collected and provided to governments, industry and the community.

The National Pollutant Inventory is expected to help create an informed community, promote achievement of waste minimisation and cleaner production objectives by industry and government and will assist in planning and priority setting by governments. Inventories already exist in the USA, Canada, the UK, and the Netherlands, but the National Pollutant Inventory has been tailored to meet specific Australian requirements.

Emissions data will be collected through direct reporting by facilities and by the use of estimation techniques for diffuse sources. Information entered into the National Pollutant Inventory will be presented geographically in electronic and printed form, and made available to interested persons and organisations. The NEPM contains a list of 90 substances for which reporting is required.

The draft NEPM and Impact Statement were released by NEPC for public consultation in June 1997 for two months. NEPC made the NEPM in February 1998.

Implementation commenced on 1 July 1998, but is subject to the finalisation of industry handbooks. Implementation of the NEPM will be phased in - reporting is required initially for 36 substances. A review of the NEPM is scheduled for October 1999, after which it is envisaged that reporting on the full list of 90 substances and transfers will be required.

Air Quality NEPM

The Air Quality NEPM builds upon work already done by several states for airshed protection. The desired environmental outcome of this NEPM is ambient air quality that allows for the adequate protection of human health and well being. This entails establishing ambient air quality standards, and monitoring and reporting protocols, for the following six major pollutants: carbon monoxide, nitrogen dioxide, photochemical oxidants, sulfur dioxide, lead, and particles. These substances are regarded as the major urban air pollutants in Australia.

A discussion paper was released in June 1997 for consultation with key stakeholders. Following consideration of submissions, the NEPC Council released a draft NEPM and Impact Statement in November 1997 for three months for formal public consultation. A final version of the draft NEPM was considered by Council in June 1998, when Council "made" the NEPM. The NEPM is now law. Implementation of the standards will be phased in over a ten year period.

Movement of Controlled Waste NEPM

The intent of the Movement of Controlled Waste NEPM is to reduce the impact on the environment resulting from the movement of hazardous wastes from one State or Territory into another, by establishing a nationally consistent system of tracking the waste. This would ensure that the waste leaving a state or territory reaches a facility licensed or approved to receive it. It would also require that transporters and vehicles of the waste comply with minimum standards. Where accidents do occur the information provided under the NEPM would assist environmental authorities and emergency services in dealing with leakages and spillages. It would also assist industry in complying with a nationally agreed standard when transporting hazardous waste across State and Territory boundaries. The Controlled Waste NEPM is based on ANZECC guidelines which have been in place for some years.

The NEPM will help Australia to fulfil its international obligations by providing a means of recording amounts and types of hazardous waste generated, transported and received. The NEPM will also provide a national system to identify waste generators whose export activities may be subject to the provisions of the Commonwealth Hazardous Waste Act.

This NEPM is expected to reduce the illegal disposal of hazardous wastes. The NEPM will require persons dealing with controlled waste to provide information to the environmental authorities in all States and Territories through which the waste is transported, including source and destination jurisdictions. This information will enable environmental authorities to monitor the movement of controlled wastes into their jurisdictions, and determine if waste has been illegally dumped.

The draft NEPM and Impact Statement were released for public consultation in January 1998. NEPC made the NEPM in June 1998, enabling implementation to commence on 7 July 1998.

NEPMs under development

Assessment of Contaminated Sites

A consistent national approach for the assessment and management of contaminated sites has been identified as a priority by both ANZECC and the NEPC.

The intent of the NEPM is to define a policy framework for the assessment of contaminated sites and include guidance in the development and use of soil and groundwater criteria, risk assessment (health and ecological), and risk management.

This NEPM will assist assessors, environmental auditors, developers and regulators to avoid costly duplication in method development, and will do so on a common basis throughout Australia.

The development of the NEPM commenced in July 1997. A Discussion Paper was released in July 1998, for a two month consultation period with key stakeholders. A formal draft NEPM and Impact Statement are expected to be released in early 1999 for formal public review, with a view to making the NEPM in late 1999.

Used Packaging Materials

ANZECC is developing a National Packaging Covenant involving all parts of the packaging chain. The objectives of the Covenant are to establish a framework for the effective lifecycle management of packaging and paper products, including recovery and utilisation; and to establish a collaborative approach between Commonwealth, State and local governments and industry.

In November 1997, NEPC initiated the development of a draft NEPM for Used Packaging Materials. The NEPM will recognise the voluntary National Packaging Covenant.

An intention of the proposed NEPM is to ensure that participants in the Covenant are not unfairly disadvantaged in the marketplace. It will also assist in fulfilling the waste reduction and recycling objectives of the Covenant.

The desired environmental outcomes of the combination of the Covenant, its schedules and the NEPM are to optimise resource use and recovery, and encourage the conservation of raw materials.

It is proposed the NEPM will be limited to the recovery, re-use and recycling of used packaging materials and will focus on:

- materials used for packaging products consumed on domestic premises;
- materials used for packaging food and beverages intended for consumption in public places or in commercial provision of food services to individuals in hotels and restaurants;
- household paper and cardboard; and
- bulk packaging of household products.

A discussion paper was released for a six week consultation period with key stakeholders in July 1998. Further development of a draft NEPM and Impact Statement will be contingent on sufficient progress being made on finalising the National Packaging Covenant.

Future NEPMs

The work program for NEPC includes consideration of the development of future NEPMs including diesel emissions from motor vehicles, and water quality.

For a possible NEPM on motor vehicle diesel emissions, a working group is supervising the letting of contracts for work to determine the characteristics and distribution of Australia's diesel fleet, and to establish in-service diesel vehicle emissions and identify appropriate testing procedures.

A third project which will provide information on the effect of diesel fuel components on emissions, diesel fuel quality options and the current composition of diesel fuels is being sponsored by the Commonwealth as part of a wider study.

The information obtained from the above studies will assist in the scoping of a diesel emissions NEPM. It is expected that NEPC will consider initiating such a NEPM in June 1999. With regard to water quality, a working group is being established to scope a possible NEPM on ambient estuarine and marine water quality, and will report to NEPC in December 1998.

Implementation

Once a NEPM is made, it is the responsibility of each participating government to implement the NEPM in its own jurisdiction, through its own environmental law framework. This means that each jurisdiction will use its own legislative and enforcement mechanisms to implement the NEPM. The manner in which the NEPM is implemented is determined by each jurisdiction.

Review

NEPMs may be reviewed from time to time, as new issues emerge, community expectations change, and/or scientific information becomes more comprehensive. The amendment or revocation of a NEPM must go through the same process as the making of a new NEPM.

Reporting

Member governments are to report annually to NEPC on the implementation of NEPMs in their jurisdictions. These reports will be published in the annual report of NEPC, enabling ready comparisons of environmental outcomes as a result of the implementation of NEPMs, thereby providing for accountability of jurisdictions to the community.

Conclusion

The establishment of the National Environment Protection Council affords Australia a national approach to environmental protection, which takes into account regional environmental differences, and builds in to the process the differing legislative frameworks which currently exist in different jurisdictions. The certainty of having national standards, with the flexibility of implementation by jurisdictional governments, will confer significant benefits on industry, particularly industry operating on a national basis.

An annual reporting mechanism will enable comparisons to be made on the effectiveness of implementation of National Environment Protection Measures across jurisdictions.

Bibliography

Robinson, B. "Smarter Regulation and Intergovernmental Cooperation in the Environmental Field", June 1995.

"International Environmental Policy Perspectives 2000 "

Bundesverband der Deutschen Industrie e.V. May 1992

"Introducing the National Environment Protection Council ", NEPC Service Corporation, April 1997.

National Environment Protection (National Pollutant Inventory) Measure, NEPC, February 1998.

National Environment Protection (Ambient Air Quality) Measure, NEPC, June 1998.

National Environment Protection (Movement of Controlled Waste between States and Territories) Measure, NEPC, June 1998.

Discussion Paper : Used Packaging Materials NEPM, NEPC Committee, July 1998.

Discussion Paper: Towards a National Environment Protection Measure for the Assessment of Contaminated Sites, NEPC Committee, July 1998.

National Environment Protection Council Act 1994(Commonwealth).

NEPC Annual Report 1996-97

Pain, N. "Current Initiatives on National Standardisation of Environmental Standards " in Boer, B., Fowler, R. and Gunningham, N. (Eds) "Environmental Outlook No. 2; Law and Policy, The Federation Press, NSW, 1996, p. 303.

Further information

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