

**IN THE MATTER OF
The Hazelwood Mine Fire Inquiry**

SUPPLEMENTARY STATEMENT OF CHRISTOPHER EVAN WEBB

Date of Document: 27 November 2015
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 Attention: Andrew Suddick

I, Christopher Evan Webb, of 200 Victoria Street, Carlton in the State of Victoria, Executive Director, Regulatory Practice and Strategy, in the Environment Protection Authority (**EPA**), can say as follows:

INTRODUCTION

1. I am the Executive Director, Regulatory Practice and Strategy in the EPA. I report to Nial Finegan, Chief Executive Officer.

THE BOARD'S REQUEST FOR THIS STATEMENT

2. I make this statement pursuant to the request made by the Hazelwood Coal Mine Fire Board of Inquiry (**Board**) by letter of 19 November 2015 (**Board's letter**). The questions in the Board's letter are set out in the remainder of this statement together with my responses.
3. Previously, the Board by letter of 9 November 2015 asked a number of questions. These were addressed in my previous statement dated 17 November 2015 (**my previous statement**), (**Annexure 11**). This supplementary statement expands upon a number of matters in the previous statement.
4. The information contained in this supplementary statement is substantially derived from enquiries carried out by officers of EPA and is accurate to the best of my knowledge, information and belief.

LICENSING AND FINANCIAL ASSURANCES

5. The EPA administers the *Environment Protection Act 1970* (**the EP Act**). As Victoria's environmental regulator, it is the EPA's role to monitor businesses and industry to ensure they comply with the EP Act.

6. The EP Act provides the EPA with a number of heads of power to achieve the legislative objectives. Important in the regulatory framework is the licensing and approvals regime which, in part, establishes the basis for enforcement action. It also prescribes and sets the limits of pollution and the obligations of duty holders.
7. An EPA licence is required for a “scheduled premises”, unless the premises are exempted, as set out in the *Environment Protection (Scheduled Premises) Regulations 2007*. (**Annexure 2 of previous statement**)
8. Licences contain standard conditions to control aspects of the operation of the premises. These conditions address matters such as waste acceptance and treatment, air and water discharges, and noise and odour. As set out in paragraph 13 of my previous statement, a licence may include a condition that the licensee provides a financial assurance under 67B of the EP Act. Not all scheduled premises have such a condition.
9. Under the current financial assurance model, financial assurances are imposed in licences as a contingency to address some of the costs that may be associated with site remediation, site closure and post-closure liabilities. These costs may be incurred when a business operator abandons its site, becomes insolvent, or incurs clean-up costs beyond its financial capacity and the EPA is unable to recover costs from the operator.
10. The EP Act specifies penalties for breach of licence conditions, and the licensee is required to establish a monitoring program to ensure that it, and EPA, can determine licence compliance. To do this, a licensee will use a risk-based approach to determine the level of monitoring required.
11. Under section 26B of the EP Act a licensee may apply for accreditation. If the requirements of section 26B (1) and (2) are met, a licensee may be granted accreditation by the Authority.

LATROBE VALLEY POWER STATIONS

12. As set out in paragraphs 17 to 20 of my previous statement, a financial assurance is not required for extractive industry and mining. However, a head of power does exist for a financial assurance to be required, as a licence condition, if the scheduled premises operate a landfill in relation to non-mining activities.
13. The Hazelwood, Yallourn and Loy Yang A and B power stations (**Latrobe Valley Power Stations**) each have an EPA licence. Only Hazelwood, Yallourn and Loy Yang A operate a landfill in relation to non-mining activities. In those circumstances, the licence conditions concerning financial assurances in their licence (referred to in my previous statement) concerns the operation of the landfill of the power stations and not the mines.
14. Hazelwood power station has a licence (**Annexure 5C of previous statement**) under section 20 of the EP Act. This licence concerns its power station stack emissions, water discharges from the site ponds and landfill area.

THE BOARD'S QUESTIONS AND MY RESPONSES

Question 1 – Why are the documents referred to in Mr Webb's statement as Annexure 1 and Annexure 10 still in draft form?

15. The draft financial assurance guidelines have been developed through the extensive reform process that is described in paragraph 24 of my previous statement. The guidelines are expected to be finalised and published in early 2016. The EPA is in the final stages of completion of the following tasks:
- 15.1 Collation of feedback received through the consultation phase, being part of extensive reform process (referred to immediately above);
 - 15.2 Changes to the draft guidelines due to consultation and additional knowledge and experience gained since the release of the draft guidelines, (released in June 2014 and February 2015);
 - 15.3 Development of appropriate communications to industry and other stakeholders related to the associated reform implementation.

Question 2 – Please provide some detail regarding the incidents referred to in paragraph 11 including the cost of the clean up?

16. In 1988, Parliament introduced the *Environment Protection (Amendment) Bill (No.2)* to make provision for financial assurances. The amendment was precipitated by a fire on 12 April 1985 which destroyed a chemical warehouse operated by Butler's transport company in Dynon Road, Footscray. There was a risk that chemicals would flow into the Maribyrnong River. EPA acted quickly and successfully to mitigate that risk (drains to stormwater were blocked, a bund built, controlled pumping of 30 million litres of contaminated water to the sewer system and treatment of contaminated sludge). This is detailed in Hansard in the second reading speech of 31 March 1988 onwards (**Annexures 12A 12B 12C**). The clean-up costs incurred by EPA arising from the fire were \$914,000, as detailed in EPA Annual Reports (**Annexure 13**).

Question 3 – What consultation process is being undertaken in relation to Annexure 3? Does this include consultation with the Latrobe Valley power stations? What has industry indicated about the pros and cons of different types of financial assurances?

17. Consultation on financial assurance reform commenced in early 2014. EPA undertook targeted engagement with industry associations including Ai Group (i.e. the Australian Industry Group), the Australian Waste Management Association (**AWMA**), the Australian Waste Association of Australia (**AWAA**) and through EPA's own Business Reference Group which contains representation from other key industry associations. EPA also met with individual licensees as requested and worked with government partners on a portfolio working group. This early engagement was used to inform the release of EPA publication 1568 *Position on provision of financial assurance for landfills and works approvals* (**Annexure 1 of previous statement**) on 26 June 2014 for industry consideration and comment.

18. Broader consultation was undertaken at the time of (and following) the release of a position paper and this included direct correspondence with Latrobe Valley Power Stations operated by Energy Australia, AGL and GDF Suez. Energy Australia provided feedback on the position statement. Energy Australia suggested consideration of its operations as low risk, due to its status as an essential service under the *Essential Services Act 1958* and with assets under common ownership. Energy Australia acknowledged that the EPA may hold a different view and if so, expressed support for a Parent Company Guarantee as a preferred financial assurance type.
19. Consultation continued through 2014 with the topic being integrated into further meetings and presentations with the waste sector, the Ai Group and the Australian Environment Business Network (**AEBN**). EPA held an Industry Open House event on 24 February 2015 which included consultation on financial assurance reform and coincided with the release of two further draft documents for industry comment: draft guidelines titled, *Types of Financial Assurances - Publication 1586* and *Financial assurance calculations for landfills, prescribed industrial waste management (PIW), container washing and PIW composting – Publication 1584* (**Annexures 3 and 10 of previous statement**). EPA held a further industry workshop on 11 March 2015 to provide an opportunity for discussion on issues raised in the two publications. Latrobe Valley Power Stations were again included in the direct notification of these publications and invited to the associated consultation events.
20. Feedback from industry largely accepted the need for EPA to secure some form of financial assurance to ensure the costs of clean up were not borne by the community. Further feedback focused on ensuring the application of financial assurance was fair, proportionate and risk-based:
- requests for special consideration due to perceived unique circumstances;
 - comments on the financial assurance calculation methodology and process;
 - support for parent company and deed poll guarantees as favourable financial assurance types;
 - clarity on credit rating requirements; and
 - requests that EPA consider a combination of existing regulatory disclosure obligations, environmental track record and financial position when determining which type of financial assurance will be acceptable.
21. EPA's intention to implement financial assurance reform over a two-year period - prioritising high risk operators with no or low financial assurance - was supported by industry.

Question 4 – Why was there a three year delay in the EPA responding to the correspondence set out in Annexure 6?

22. Over this timeframe, there were discussions within EPA as well as with the Latrobe Valley Power Stations. EPA personnel involved with these communications are not currently with EPA and therefore I am unable to explain the elapse of time.

Question 5 – How was financial assurance to be calculated for each of the Latrobe Valley power stations? What figure would be considered "satisfactory" to the EPA as required by the Act?

23. Each financial assurance is calculated in accordance with EPA Publication 777 *Determination of financial assurance for landfills* (**Annexure 9 of previous statement**). For transparency and consistency, EPA uses this for its assessments and determinations.
24. As detailed in the publication, each calculation reflects a complex assessment of factors determined according to the circumstances of each premises.

Question 6 – Please provide submissions and correspondence between the EPA and the mines which deals with the matters set out in paragraph 23 - in particular, the proposals from Hazelwood and Yallourn and request for assistance from Loy Yang and any responses to these by the EPA.

25. The EPA has received correspondence from the Latrobe Valley Power Stations, not the mines.
26. The correspondence that we have been able to locate in respect to the financial assurance is:
- Hazelwood Power FA proposal 2012 (**Annexure 14A**);
 - Loy Yang FA Proposal – Landfill Financial Assurance Requirements July 2012 (**Annexure 14B**);
 - Tru Energy FA proposal 2007 presentation (**Annexure 14C**);
 - Tru Energy FA proposal letter 2012 (**Annexure 14D**);
 - Tru Energy Financial Assurance Proposal Report 2007 (**Annexure 14E**).

Question 7 – Please provide any documents detailing the review undertaken in 2011 referred to in paragraph 24.

27. In 2010, EPA began a comprehensive national and international review of alternative financial assurance models. PwC was engaged to undertake the review and deliver a *Financial Assurance Options Analysis* report (**Annexure 15**).
28. The report was tabled at the EPA Executive Management Team meeting of 8 March 2011 with an options paper (**Annexure 16**).

29. The recommendation to proceed with a pooled fund approach for site clean-up was investigated but determined not to be the preferred model, partly due to an insufficient legal basis under section 67B of the EP Act.
30. Reform of the existing financial assurance model continued from this point and led to the release of the three draft financial assurance publications for public consultation (**Annexures 1, 3 and 10 of previous statement**).

Question 8 - Please provide any documents detailing the consideration of the Latrobe Valley power stations as moderate risk as referred to in paragraph 24.

31. The EPA risk assessment tool requires provision by the licensee of detailed information about the operations of the premises in order to undertake the assessment. The risk assessment considered factors to determine both likelihood of financial exposure and consequence of such an exposure. Factors for assessing likelihood included company characteristics, site management and compliance history, while factors for assessing consequence included potential cost and potential for harm.
32. The risk assessment includes commercial in confidence information therefore an extract for the risk assessment results for Yallourn and Hazelwood is attached (**Annexure 17**). The assessment for Loy Yang has not been finalised.

Question 9 - Please detail how it is intended to calculate and obtain financial assurances from the Latrobe Valley power stations and when this will occur.

33. The Financial Assurance reform program will apply to all scheduled premises with a financial assurance requirement. The guidance documents (**Annexures 1, 3 and 10 of previous statement**) will be finalised and published in early 2016 and phased implementation will continue. Implementation will include a review of all existing and required financial assurances.
34. The review of financial assurances for the Latrobe Valley Power Stations will be included in the implementation process, and discussions will commence early in 2016.
35. EPA will inform all licensees, including the Latrobe Valley Power Stations, of their financial assurance requirements. For the Latrobe Valley Power Stations this will include a calculation of the financial assurance requirement for their landfills in accordance with the final version of draft publication 1584 - *Financial assurance calculation for landfills, prescribed industrial waste management (PIW), container washing and PIW composting* (**Annexure 10 of previous statement**).
36. Each licensee will be required to detail the type of financial assurance that it is seeking to provide, and the timing for its provision. If the proposed type of financial assurance is not a bank guarantee, the licensee will need to explain why the alternative type is justified and should be accepted. Draft publication 1586 – *Types of financial assurance* notes that “EPA expects that bank guarantees will continue to be the most common form of financial assurance it accepts,” and it provides some guidance on circumstances where alternative types of financial assurance may be acceptable.

37. A timeframe for submission of each proposal will be advised by EPA. This will be based on the amount of time required for the duty holder to perform the calculation steps detailed in paragraph 35.
38. As part of the standard process, the Latrobe Valley Power Stations will be required to provide a proposal including an assessment of the costs associated with three components – operational, closure and aftercare financial assurance. A formula is used to calculate the operational component, however the closure and aftercare components are calculated by estimating costs for activities detailed in the guideline. The calculation should be verified by a suitably qualified and experienced person such as an accredited civil or environmental engineer or scientist/geoscientist, or a suitably accredited quantity surveyor.
39. EPA will only be able to estimate the amount of the financial assurance when this information is provided by the Latrobe Valley Power Stations.
40. EPA will perform a review of the calculation submitted by each of the Latrobe Valley Power Stations to confirm their adherence to the guideline and technical details. The proposals will be submitted for Authority approval.
41. Upon approval, EPA will advise the date by which the executed financial security must be provided by each Latrobe Valley Power Station.

Question 10 – Why has the review process referred to in paragraph 37 yet to commence? When will it commence and when will it conclude?

42. The three financial assurance publications (**Annexures 1, 3 and 10**) are due to be released in final form in early 2016. Implementation will include establishment or review of financial assurance for every site that is required to submit one. Implementation is anticipated to occur over the following two years. EPA then intends to review the amount of financial assurance which it holds at least every five years as stated in paragraph 36 of my previous witness statement.

The following responses are in regards to questions regarding paragraphs 39-43 in Mr Webb’s statement having reference to <http://www.abc.net.au/news/2015-11-02/environment-victoria-fears-for-latrobe-valley-energy-brix-site/6904210>.

Question 11 – Did HRL Limited provide any financial assurance under the EP Act?

- (a) ***If so, please answer the question 6 – 10 from our previous correspondence.***
- (b) ***If not, is the rehabilitation bond referred to in the article a bond held pursuant to the Mineral Resources (Sustainable Development) Act?***
43. HRL Limited does not operate any activities that are scheduled under the *Environment Protection (Scheduled Premises) Regulations 2007*. Therefore, HRL Limited does not hold a licence under section 20 of the EP Act. There is no basis under the EP Act for the EPA to require HRL Limited to provide a financial assurance.
44. The EPA understands that HRL Limited is the owner of the land located at 412 Commercial Road, Morwell.

45. Both HRL Limited and Energy Brix Australia Corporation Pty Ltd (**Energy Brix**) have entered into voluntary administration.
46. EPA does not have administrative duties under the *Mineral Resources (Sustainable Development) Act 1990* and as such cannot respond to question 11b.

Question 12 – Please provide details of any discussions between the EPA and the company/administrators about the future use of the site and how the EPA would "ensure the clean-up is done at the company's expense".

47. The EPA has had extensive discussions with Energy Brix and HRL Ltd over time, particularly in recent years in relation to the existing and proposed uses of the site and its future options in the event the site ceases operations.
48. On 21 May 2012 (**Annexure 18**) EPA sent a letter to Energy Brix outlining guidance on regulatory requirements and process for site closures relating to the Commonwealth Contract for Closure Program.
49. Also in 2012 the EPA became aware that Energy Brix received funds from the Federal Government to enable the continuation of briquette production for a period of two years.
50. In 2014, at the expiration of the Commonwealth funding package, it is understood that briquette production ceased but that a stockpile of briquettes enabled the continued supply for a further 2-3 years.
51. Across 2014-2105 the EPA has had a number of meetings with Energy Brix and HRL Ltd to understand the likely future of business activities at the site and remediation actions. Over the course of those meetings, the EPA was advised of a "Custody Deed" entered into between Energy Brix, National Australian Trustees Ltd, SECV and the Treasurer of Victoria.
52. On about 27 October 2015, EPA became aware that HRL Limited, Energy Brix and the HRL group entered voluntary administration.
53. EPA sent a letter to PPB Advisory, the Administrator, dated 2 November 2015 (**Annexure 19**), advising of the Licences issued by EPA under section 20 of the EP Act and requesting that the Administrator set up appropriate arrangements to ensure:
- 53.1 ongoing compliance with the Licences, specifically to address any environmental risk pertaining to current and proposed activities on site; and
- 53.2 that there is sufficient planning for site remediation in the event of cessation of the business or its sale and transfer.
54. EPA inspected Energy Brix site on 5 November 2015. Representatives of Energy Brix and the Administrator were present during the site inspection.
55. On 4 November 2015 in a telephone conversation between EPA and PPB Advisory, EPA was advised there would be no objection to an EPA representative attending, as an observer, at the First Meeting of Creditors held on 9 November 2015.

56. On 9 November 2015 an EPA representative attended the First Meeting of Creditors as an observer.
57. EPA is considering what future action and regulatory options may be appropriate to apply, and at what stage, to enhance EPA's understanding of environmental risks associated with the site and how best to manage them into the future.

Question 13 - Is the \$27 million bond deemed sufficient to cover the clean-up cost? Please provide details.

58. The EPA does not have precise information about the total quantum of the funds held in trust, nor at this stage does the EPA know what is intended to be done with the premises given the administration process.
59. Based on past interactions with Energy Brix and the recent site inspection, EPA believes that contamination is contained to buildings on the premises and that there is a need for removal of residue briquettes. If Energy Brix continues operations (post administration) then EPA expects that the stock pile of briquettes will be reduced. It is not possible at this stage to say whether the funds in the Custody Deed are sufficient to cover the costs of remediation.

Question 14 - Could the EPA have imposed a financial assurance on HRL Limited? Was this ever considered? Please provide details.

60. The EPA does not consider that there are grounds for a financial assurance to be required of HRL Limited. Please refer to question 11.

Dated 27 November 2015

List of Annexures

1. Annexure 11 - Statement of Christopher Evan Webb dated 17 November 2015 [EPA.1007.001.0001]
2. Annexure 12A, 12B and 12C - *Environment Protection (Amendment) Bill (No.2)* - second reading speech of 31 March 1988 [EPA.1007.001.0008, EPA.1007.001.0012, EPA.1007.001.0016]
3. Annexure 13 - EPA Annual Reports [EPA.1007.001.0022]
4. Annexure 14A - Hazelwood Power FA proposal 2012 [EPA.1007.001.0029]
5. Annexure 14B - Loy Yang FA Proposal - Landfill Financial Assurance Requirements July 2012 [EPA.1007.001.0029]
6. Annexure 14C - Tru Energy FA proposal 2007 presentation [EPA.1007.001.0043]
7. Annexure 14D - Tru Energy FA proposal letter 2012 [EPA.1007.001.0057]
8. Annexure 14E - Tru Energy Financial Assurance Proposal Report 2007 [EPA.1007.001.0058]
9. Annexure 15 - *Financial Assurance Options Analysis* report [EPA.1007.001.0090]
10. Annexure 16 - EPA Executive Management Team meeting on 8 March 2011 options paper [EPA.1007.001.0174]
11. Annexure 17 - Extract for the risk assessment results for Yallourn and Hazelwood [EPA.1007.001.0177]
12. Annexure 18 - EPA letter to Energy Brix dated 21 May 2012 [EPA.1007.001.0178]
13. Annexure 19 - EPA letter to PPB Advisory, the Administrator dated 2 November 2015 [EPA.1007.001.0186]