

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

STATEMENT OF CHRISTOPHER EVAN WEBB

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Filed on behalf of: The State of Victoria
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Attention: Andrew Suddick

I, Christopher Evan Webb, of [REDACTED] 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.
2. I have held my role since December 2014. My primary responsibilities include:
 - 2.1 operations strategy;
 - 2.2 operations support;
 - 2.3 regulatory programs; and
 - 2.4 strategic partnerships with community, industry and government.
3. Prior to working in my current role, I was the Director of Environmental Regulation at the EPA for three years, where I was responsible for field operations and regulatory reform, and prior to that I was the Director of Environmental Services for 14 months where I was responsible for a range of central regulatory functions and environmental monitoring. Prior to working at the EPA, I was the Director of Construction and Utilities at the Victorian WorkCover Authority (known as WorkSafe) for three years, where I was responsible for the regulatory field programs for the construction, electricity generation, quarry and major events industry sectors.
4. I have a Bachelor of Science qualification from Monash University, majoring in chemistry.

EPA

5. EPA is an independent statutory body. Its role is to regulate pollution and it has authority to make regulatory decisions under the *Environment Protection Act 1970* (**the EP Act**). The Minister for Environment, Climate Change and Water is the minister responsible for the EPA.
6. EPA has four directorates: Regional Services, Regulatory Practice and Strategy, Knowledge, Standards & Assessments and Corporate Services. Each directorate is led by an executive director.
7. The Regulatory Practice and Strategy directorate works across EPA, stakeholders and the community to protect the Victorian environment.

THE BOARD'S REQUEST FOR THIS STATEMENT

8. This statement has been prepared pursuant to the request made by the Hazelwood Mine Fire Board of Inquiry by letter of 9 November 2015 (**Board's letter**).
9. The questions posed by the Board's letter, and my responses, are set out in this statement.
10. The information contained in this statement is derived from research carried out by officers of EPA at my request in response to the Board's letter and is accurate to the best of my knowledge, information and belief.

THE BOARD'S QUESTIONS AND MY RESPONSES

Question 1 – Provide a brief overview of the financial assurances scheme including to whom it applies (with specific reference to Latrobe Valley mines) and the types of financial assurances which can be set.

Introduction

11. The scheme of requiring financial assurances was introduced as a regulatory tool following a number of incidents where the EPA conducted clean up following business failures. The purpose of a financial assurance is for the duty holder to assure the EPA that in the event a clean up is required, appropriate funds are available.
12. See further the EPA draft position statement, *EPA position on provision of financial assurance for licences and works approvals* (June 2014, EPA publication 1568) (**Annexure 1**).

Statutory scheme

13. The power of the EPA to require a financial assurance is governed by sections 21, 31A and 53F of the EP Act. A financial assurance can only be required in the following circumstances:
 - 13.1 Section 21(1)(ba): the EPA in issuing a works approval or a licence or amending a licence may specify that the works approval or licence or the

amendment of the licence is subject to compliance by the occupier of the relevant premises with a condition that the occupier must provide the EPA with a financial assurance satisfactory to the EPA with respect to a particular type of premises, described as “scheduled premises”. The *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007 (the Scheduled Premises Regulations)*(Annexure 2) sets out the scheduled premises that require a financial assurance (column 4 of Schedule 1).

- 13.2 Section 31(2A): the EPA may issue a pollution abatement notice that requires a person on whom it is served to provide the EPA with a financial assurance satisfactory to the EPA with respect to “scheduled premises”.
 - 13.3 Section 53F(5): the EPA may refuse to issue or transfer a permit to transport prescribed waste or prescribed industrial waste unless the applicant provides the EPA with a financial assurance satisfactory to the EPA.
14. Section 67B prescribes the form of the financial assurance. Section 67C governs claims on financial assurances.

Form of the financial assurance

- 15. The EPA has historically required a financial assurance in the form of a bank guarantee. However, section 67B prescribes other forms of financial assurance (e.g. a letter of credit and personal guarantees) and also provides that the financial assurance may include any other form of security that the EPA considers appropriate.
- 16. The EPA is currently expanding the form of financial assurance that it will accept. A draft guideline was released in February 2015 (Draft Guideline, *Types of Financial Assurances*, February 2015, EPA Publication 1586) (Annexure 3) to enable consultation with industry. The different types of financial assurances may presently include the following:
 - 16.1 Bank Guarantee;
 - 16.2 Guarantee (by Deed Poll);
 - 16.3 Mutual Fund;
 - 16.4 Accumulating trust fund;
 - 16.5 Controlled bank account;
 - 16.6 Letter of credit;
 - 16.7 Certificate of title;
 - 16.8 Bond; and
 - 16.9 Insurance.

Latrobe Valley Mines

17. A financial assurance is not required for “extractive industry and mining” (Schedule 1 of the Scheduled Premises Regulations at “C: Mining”) or “power stations” (Schedule 1 of the Scheduled Premises Regulations at “K: Utilities”).
18. However, a financial assurance is required for “Landfills” (Schedule 1 of the Scheduled Premises Regulations at “A05 (Landfills)”). This excludes “premises with solely land discharges or deposits used only for the discharge or deposit of mining wastes” in accordance with the relevant Act.
19. In the circumstances, a financial assurance is not required for landfills which receive only mine waste.
20. However, the Hazelwood, Yallourn and Loy Yang power stations (**Latrobe Valley Power Stations**) also have “landfills” related to non-mining activities. **Annexures 4A-C** show the respective landfill areas for each of the Latrobe Valley Power Stations.
21. The Latrobe Valley Power Stations currently hold EPA licences (**Annexures 5A-C**). Each of the licences requires that that the operator must maintain a financial assurance for their landfill areas calculated in accordance with the EPA method (see general conditions of the licence at LI_G6).
22. The EPA does not hold a financial assurance from the operators of the Latrobe Valley Power Stations. A licence condition was initially imposed on the operators requiring them to provide a proposal for a financial assurance soon after ~~the commencement of section 67B (1 October 2000)~~. In September 2002 EPA received a joint submission from the operators of the three Latrobe Valley Power Stations stating that they did not consider it appropriate that they be required to give financial assurances (**Annexure 6**). They stated that their landfills should not be covered by the same conditions as a commercial landfill, and that a financial assurance duplicated the rehabilitation bond held by the Department of Natural Resources and Environment (**DNRE**), the mining regulator at the time. The EPA formally responded to this submission in July 2005 maintaining that a financial assurance was required (**Annexure 7**). Our review of records covering this period is ongoing at this stage, however we have not so far identified any records that explain why EPA did not ultimately pursue the operators to provide the financial assurances.
23. In 2010 EPA undertook a licence reform program on all licensed sites, being in excess of 700 instruments. This resulted in, among other things, the current licence condition being imposed which explicitly requires the operators to maintain a financial assurance. This condition took effect in July 2011. In 2012 the EPA received proposals from Hazelwood and Yallourn concerning the type and amount of financial assurances which they would be prepared to provide, and also received a request for assistance on the calculation from Loy Yang. However, no financial assurance has been given by any of the operators *and during the reform process EPA has not actively sought these.*
24. Implementation of the financial assurance instrument has proven difficult since its inception. Following a review in 2011, the absence of financial assurance enforcement, and the variability of their application was considered to be

unacceptable. EPA commenced a reform program, to evaluate a more effective model that could operate within the constraints of the legislation as drafted. During this time, the decision was taken to focus any financial assurance compliance work on new licences and very high risk sites. Considering factors such as risk of environmental harm, financial viability and compliance history, the Latrobe Valley Power Station landfills were considered to be a moderate risk, and were not prioritised for action. Whilst implementation of the new model has commenced, the Latrobe Valley Power Stations have operated without the requisite financial assurance in place for a prolonged period. From August 2015, the regulatory programs function of the Regulatory Practice and Strategy directorate has assumed responsibility for the reform program.

25. As part of the reform implementation, it is intended that financial assurances will be obtained from all sites that are required to provide them pursuant to the Scheduled Premises Regulations.

Question 2 – How is it determined which type of financial assurance is appropriate for a particular applicant?

26. Section 67B(2) of the EP Act provides that the EPA is to determine the type and extent of a financial assurance.
27. As stated above, the EPA has historically required a financial assurance in the form of a bank guarantee but is currently considering expanding the form of financial assurance that it will accept.
28. The EPA expects that bank guarantees will continue to be the most common form of financial assurance into the future. The EPA is currently consulting with industry about the form of financial assurance. The EPA will assess the benefits, risks and drawbacks associated with each type of financial assurance on a case-by-case basis before making a decision as to what it will require.
29. Factors which the EPA has identified as relevant to this assessment include:
- 29.1 the financial standing of the operator;
 - 29.2 the level of certainty that the type of financial assurance will enable funds to be called on when required, including in an insolvency situation; and
 - 29.3 the feasibility of the type of financial assurance for the particular operator.

Question 3 – How are the financial assurances calculated (including when the draft guideline for calculating does not specifically apply)?

30. In the past, the calculation of a financial assurance has been informed by two information bulletins, *Guidelines for determining financial assurances – Schedule 4 premises* (February 2006, EPA publication 456.1) (**Annexure 8**) and *Determination of financial assurance for landfills* (September 2001, EPA publication 777) (**Annexure 9**).
31. The EPA has also recently published a draft guideline for how it will calculate the amount of financial assurances, *Financial assurance calculation for landfills*,

prescribed industrial waste management (PIW), container washing and PIW composting (February 2015, EPA publication 1584) (**Annexure 10**). The draft guideline sets out different calculation methods for different types of scheduled premises.

32. Where the draft guideline applies, the EPA now determines the amount of financial assurance in accordance with the draft guideline unless the duty holder demonstrates that a different calculation of financial assurance is appropriate. A different calculation would only be applied in exceptional circumstances.
33. Where the draft guideline does not apply, the EPA determines the amount of the financial assurance on a case-by-case basis by assessing the potential costs of clean up, remediation or aftercare associated with the activity.

Question 4 – How are financial assurances reviewed?

34. The amount of any financial assurance is reviewed whenever the licence associated with that financial assurance is amended in a way that warrants such a review. For example, if a licence is amended to permit a change to waste storage limits or if additional landfill cells are approved, then the amount of any financial assurance will be reviewed prior to amending the licence to determine whether it remains appropriate or should be recalculated.
35. Additionally, when a licence or works approval is transferred to a different person or entity, and the EPA holds a financial assurance in association with that licence or works approval, the amount will be reviewed and may be recalculated based on current site conditions and current financial assurance guidelines.
36. Further, as set out in the EPA draft position statement, *EPA position on provision of financial assurance for licences and works approvals* (June 2014, EPA publication 1568) (**Annexure 1**), the EPA intends to review the amount of financial assurances which it holds at least every five years, and also intends to undertake a review in conjunction with any future review of its financial assurance calculation guidance.
37. A component of the implementation of the EPA's current financial assurance reform work is the establishment or review of financial assurance for every site that is required to submit a financial assurance. This is planned to occur over the next two years. The EPA has not yet commenced this review process.

Question 5 – Have there been any examples where the EPA has reviewed a financial assurance and increased the amount? Please outline.

38. Yes, there has been. An example of such a review was the recent sale of a landfill site at Ravenhall in 2015. The amount of the financial assurance for this site was reviewed in accordance with the EPA draft position statement, *EPA position on provision of financial assurance for licences and works approvals* (June 2014, EPA publication 1568) (**Annexure 1**) and the amount was increased.

Question 6 – How much was the Energy Brix financial assurance?

39. Energy Brix is not required to provide a financial assurance under the EP Act.

Question 7 – What type of financial assurance did Energy Brix provide?

40. It has not provided a financial assurance.

Question 8 – How was it calculated and when did this occur?

41. Not applicable.

Question 9 – Has the amount ever been reviewed? If so, what were the result/s of this/these reviews? If not, why not?

42. Not applicable.

Question 10 – Is the Energy Brix financial assurance held considered adequate to cover rehabilitation/clean-up of the site?

43. Not applicable.

Dated 17 November 2015

LIST OF ATTACHMENTS

1. Annexure 1 - *EPA position on provision of financial assurance for licences and works approvals* (June 2015, EPA publication 1568) [EPA.1004.001.0001]
2. Annexure 2 - *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* [EPA.1004.001.0044]
3. Annexure 3 - Draft Guideline, *Types of Financial Assurances*, February 2015, EPA Publication 1586 [EPA.1004.001.0007]
4. Annexures 4A to 4C - landfill areas for each of the Latrobe Valley Power Stations [EPA.1004.001.0093, EPA.1004.001.0094, EPA.1004.001.0095]
5. Annexures 5A to 5C - Latrobe Valley Power Stations EPA Licences [EPA.1004.001.0084, EPA.1004.001.0096, EPA.1004.001.00104]
6. Annexure 6 - GHD Financial Assurance Letter [EPA.1005.001.0001]
7. Annexure 7 - EPA Financial Assurance Letter to Power Stations [EPA.1005.001.0003]
8. Annexure 8 - *Guidelines for determining financial assurances - Schedule 4 premises* (February 2006, EPA publication 456.1) [EPA.1004.001.0025]
9. Annexure 9 - *Determination of financial assurance for landfills* (September 2001, EPA publication 777) [EPA.1004.001.0034]
10. Annexure 10 - *Financial assurance calculation for landfills, prescribed industrial waste management (PIW), container washing and PIW composting* (February 2015, EPA publication 1584) [EPA.1004.001.0003]