

6 February 2017

Ms Gabrielle Upton MP  
Minister for the Environment  
Minister for Local Government  
Minister for Heritage  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister

**RE: RECENT CHANGES TO THE APPROVED METHODS DOCUMENT**

The Australian Sustainable Business Group (ASBG) is an independent organisation designed to assist industry and business in environmental and technical issue management. The primary means to assist business is through providing information on these issues and providing advocacy to our 120 members to Government on a broad range of environmental issues.

I wish to raise an issue regarding a recent change to the NSW Environment Protection Authority's document: [Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales 2016](#) (Approved Methods). This document was released on 31 January 2017, the day of your new appointment as Minister. It is also dated November 2016, which means the change occurred while Mr Speakman was still Minister. I appreciate that this change was undertaken during the transition between Ministerial positions, but consistency on overlapping matters should be an important consideration for any Government.

In short the issue is that Mr Speakman assured ASBG's members and attendees at a Breakfast meeting on 7 July 2015, where over 40 attended, that the new [Ambient Air Quality, National Environment Protection Measure 2015](#) (AAQ NEPM) would not be applied under future Approved Methods documents. However, this newly released Approved Methods has done exactly this, under s7.1, contrary to Minister's Speakman's July 2017 assurance.

The issue of applying AAQ NEPM criteria to individual sites is a miss use of the method. There a number of submissions, ASBG's included which have indicated this miss-use of the criteria. AAQ NEPM criteria states it is to be applied to an ambient population of 10,000 as an average. Hence, application to individual industrial site, largely sites with Environment Protection Licences, whereby the EPA can enforce the ambient criteria to the '*nearest existing or likely future off-site sensitive receptor*' are a miss-use of its intent. Application of the Approved Methods guidelines limits and criteria subjects affected sites to far tighter and costly to meet conditions than are imposed on other business across Australia.

While the intent of Approved Methods is to apply environmental criteria at the planning stage this is expanded to capture existing operating sites. A number of ASBG members indicate they been required to meet the older AAQ NEPM criteria under the 2005 version of the Approved Methods.

For example, tying [POEO Act s128\(2\)](#) minimisation of air pollutants to the Approved Methods document has been used by the Land & Environment Court. In [Environment Protection Authority v Unomedical Pty Limited \(No 3\) \[2010\] NSWLEC 198](#), S93-106 states that Approved Methods was admitted by the Court for determining if s128 had been exceeded. Further in s226 it states:

*The evidence of Mr Court was not, contrary to the assertions of Unomedical, that the 2005 Approved Methods document applied to the facility, rather it was that the document could, and regularly was, used as a guide to regulate the emission of toxic chemicals such as EtO in the absence of any such prescription. The document was therefore relevant, as was Mr Kolding's awareness of its contents.*

While the above example is not referring to an AAQ NEPM limit in Approved Methods, it does refer to another 'limit' on air toxics, but sets a prescient on the use of its limits. As a consequence of this case, and other applications of the Approved Methods to ASBG members' sites, businesses must interpret its limits as actual limits under NSW environmental law. Hence, s 7.1 in Approved Methods becomes a default limit for all sites in NSW.

As a consequence, ASBG would like to understand why Mr Speakman's and or the Government's position, of not adopting the AAQ NEPM criteria in the Approved Methods was reversed. If it was an intentional change of policy ASBG would appreciate an explanation as to why it was not informed of this change and only found out about it by the final published and enforceable document.

Yours Sincerely



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