

Load Reduction Agreements

*Freeing funds
for environmental improvements*



Department of
Environment and
Conservation (NSW)

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Load reduction agreements are a way of helping the holders of environment protection licences in New South Wales fund environmental improvements by reducing the load fees they pay. This guide is designed to explain to licensees how the system works and the environmental and financial benefits it can bring.

What are load reduction agreements?

Load reduction agreements (LRAs) are an important component of the Load-Based Licensing Scheme (LBL) administered by the Department of Environment and Conservation (DEC). Under LBL, some holders of environment protection licences are required to pay load fees. The LBL approach is to use pollutant ‘load’ (or amount of pollution) as the basic unit of measure, rather than pollution concentration. The fee is based on the *load*, *how harmful* it is, and *where* it is released.

LRAs are voluntary agreements between DEC and those licensees who are required to pay pollutant load fees under the Protection of the Environment Operations (General) Regulation 1998. LRAs provide immediate fee reductions for licensees willing to commit to future reductions of assessable pollutant loads (the agreed load). DEC then agrees to calculate its fees on the agreed load rather than the actual load. Money that would otherwise be paid in fees can then be used for investment in improving environmental performance.

LRAs last for a maximum of four years, giving licensees up to three full years to upgrade operations and a final year to show they have permanently reduced pollutant loads to an agreed lower level.

Some LBL background

Under LBL, the annual load fee for each pollutant considered potentially harmful to the environment (the ‘assessable pollutant’) is based on the ‘assessable load’. This is the lowest of the ‘actual’, ‘weighted’ or ‘agreed’ loads which are defined as follows:

Actual load: mass of pollutant discharged (in kilograms) during the licence fee period, calculated using the Load Calculation Protocol, available from DEC (phone 131 555) or the DEC website at www.environment.nsw.gov.au/licensing/lblprotocol/index/htm

Weighted load: calculated by applying a discount to the actual load according to the method set out in Section 5 of the Load Calculation Protocol

Agreed load: the load set for assessable pollutants under an LRA

To comply with an LRA, the licensee must report an actual or weighted load that is less than or equal to the agreed load for the last licence fee period of the LRA.

The agreed load cannot be reported in subsequent annual returns beyond the term of the LRA. Instead, the actual or weighted load must be reported and must comply with the amended annual load limit.

If a licensee’s actual annual load is lower than their agreed load, there is no further fee reduction.

How do LRAs work?

Under an LRA the licensee commits to reducing the annual emissions of one or more assessable pollutants to a lower agreed load, expressed in kilograms. The licensee has up to three years to achieve this and a final year to verify the loads.

Pollutant load fees are then based on the agreed load(s). This means that fees are paid as if the agreed environmental improvements have already been achieved.

For example, if a licensee plans to reduce annual total phosphorus discharges from 1000 kilograms to 100 kg in four years' time, an agreed load of 100 kg may be reported in each year's annual return to DEC and used to calculate fees. Savings could be considerable.

However, if the licensee does not achieve the agreed load in the final year of the LRA (i.e. the actual or weighted load is not equal to or below the agreed load), the licensee must repay excess fee reductions to DEC, in line with what *has* been achieved.

In return for the immediate fee reductions they receive under an LRA, licensees agree to lower their annual pollutant load limits beyond the term of the LRA. This ensures that LRAs lead to enduring environmental benefits. The new annual load limit comes into effect at the end of the LRA.

Pollution reduction programs and LRAs

Pollution reduction programs (PRPs) are another important way the pollution licensing system brings environmental improvements. PRPs are complementary to LRAs, with both playing important roles as outlined below. PRPs and LRAs can work together in a program of environmental improvement or they can stand alone.

	LRAs	PRPs
Purpose	Provide financial assistance to improve environmental performance	Require environmental improvement
Nature	Voluntary, proposed by licensee	Mandatory licence condition negotiated between DEC and licensee, taking into account DEC priorities for the facility
Penalty for non-compliance	Non-achievement triggers repayment requirement	Breach of a licence condition is a potential criminal offence
Responsibility for how the targets will be achieved	Licensee responsible for the proposed means of achievement	Includes DEC technical assessment of the proposed means with the means themselves possibly specified as a requirement rather than the outcome
Coverage	Only assessable pollutants for the licence may be included	Any environmental issue where DEC has jurisdiction

Mandatory works required under a PRP, which reduce the loads of assessable pollutants, can also be used to achieve pollutant fee reductions under an LRA.

Applying for an LRA

Application forms for LRAs are available from all DEC offices and the DEC website at www.environment.nsw.gov.au/licensing/lbl/load-reduction-agreements.htm. Licensees should send completed applications to their local DEC office.

DEC is pleased to consider first drafts and provide comment on the suitability of proposed load reduction programs. **However, licensees are solely responsible for determining that the proposed program will achieve the agreed load(s) in the time frame of the LRA. By entering into an LRA, licensees are committing themselves to either meeting the agreed load or repaying fee savings, together with penalty interest.**

The licensee must attach documents to the application to confirm that all necessary consents and funding have been obtained for the proposed program. Once DEC receives a final signed application, it will be assessed and, if acceptable, DEC will issue the proposed LRA to the licensee for signature and acceptance.

At the same time, DEC will send the licensee a variation notice advising that the agreed load during the LRA will become the ongoing annual load limit to be met at the end of the agreement.

DEC will not usually agree to an LRA where the total fee reduction over the term of the agreement is likely to be less than \$2000.

When can a licensee apply for an LRA?

Current or prospective holders of an environment protection licence, which requires them to report on assessable pollutant loads, can apply for an LRA at any time.

Prospective licensees can apply for an LRA at the same time as their licence application or while their application is being considered. Once the licence has been approved, DEC is then able to issue an LRA.

Commencement of LRAs

LRAs can be entered into at any time during the year, although they will commence at the start of the following licence fee period. For example:

An LRA application is dated sometime within the first half of the licence period

A licensee enters into an LRA on the 60th day of their licence fee period. If the agreement is approved, the LRA commences at the start of the following licence fee period and the licensee must report and pay on actual loads for the current licence fee period. Only after the following licence fee period will the licensee be able to pay and report on agreed loads. This will provide the licensee with additional time to complete the program of actions.

Information required in an application

Licensee details

The LRA application must state the licence number, the name of the licensee(s) and the premises to which the LRA will apply. Where more than one person or party holds the licence, all should be listed on the application. The application should also list the name and position of a contact person.

Licence fee periods covered by the LRA

An LRA can last for up to four 12-month licence fee periods, i.e. the agreed loads may be reported as assessable loads in as many as four annual returns to DEC. This gives licensees up to three full licence fee periods to upgrade operations and one further year to demonstrate they have achieved the agreed load. To retain all the load fee reductions received, the actual or weighted load reported in the last licence fee period of the LRA must be equal to or less than the agreed load in the LRA. The minimum length of an LRA is two licence fee periods.

Proposed agreed loads for each assessable pollutant

The application should list the agreed load for each assessable pollutant to be included in the LRA.

Licensees must ensure that the proposed agreed loads will be sustainable and achievable beyond the life of the LRA when the agreed load will become the new annual load limit. This ensures that environmental improvements achieved during an LRA continue into the future. This arrangement is put in place by varying the licence conditions before an LRA commences.

If, at the end of the LRA, the agreed load is not achieved, DEC will consult with the licensee to set a new annual load limit. In these cases the licensee will need to repay the fee reductions received, plus any penalty interest.

Program of actions

In the LRA application, the licensee must describe a program of actions to achieve the agreed load(s).

It is possible that a program of actions will reduce the levels of more than one pollutant, e.g. upgrading a sewage treatment plant may reduce the annual load of all assessable pollutants. Part or all of the same program can also be used across different LRAs.

The licensee is responsible for ensuring the adequacy of the proposed program of actions to meet the agreed load. If the program falls short, the licensee may have to repay some or all of the reduced fees granted.

The licensee must supply supporting documentation confirming that all necessary approvals and consents have been granted and, where applicable, that all funds have been approved.

Number of LRAs

A licensee can hold several LRAs for different assessable pollutants at the same time. Where a pollutant is assessable for more than one activity on the same licence, a separate agreed load for that pollutant must be nominated for each activity in any proposed LRA. These features are demonstrated in the following example:

A licensee conducts two activities at one premises and enters into two separate LRAs. Both LRAs run for four 12-month licence fee periods. The LRAs are set up as follows:

- LRA 1: for benzene for Chemical Storage (fuel terminal) with an agreed load of 10 kilograms
- LRA 2: for lead for Waste Oil Recovery with an agreed load of 3000 kg, for VOCs for Waste Oil Recovery with an agreed load of 200 kg, and for VOCs for Chemical Storage (fuel terminal) with an agreed load of 800 kg

Activity type	Assessable pollutants	Agreed load
Chemical Storage (fuel terminal)	Benzene (air)	LRA 1: 10 kg
	VOCs (air)	LRA 2: 800 kg
Waste Oil Recovery	Lead (air)	LRA 2: 3000 kg
	VOCs (air)	LRA 2: 200 kg
	Oil and grease (water)	No agreement

Calculating the savings in fees

The money saved through fee reductions under an LRA is the difference between the fee paid for each assessable pollutant under the LRA – which is based on the agreed load – and the fee that would apply if there were no LRA – which would be based on the actual or weighted load.

The total fee savings from an LRA is the sum of all the fee reductions received during the term of the agreement.

Figure 1 shows the actual or weighted load and the agreed load for an assessable pollutant produced during an activity that attracts a load-based fee. The fee savings are equal to the actual or weighted load fee minus the load fees payable for the agreed load. In Figure 1 the total fee saving over the four 12-month licence fee periods is:

$$S_1 + S_2 + S_3$$

Use the DEC LBL online licence fee calculator at www.environment.nsw.gov.au/lblcalc/ to calculate for each licence fee period the actual or weighted load fees and the agreed load fees and then subtract the values to get S_1 , S_2 and S_3 .

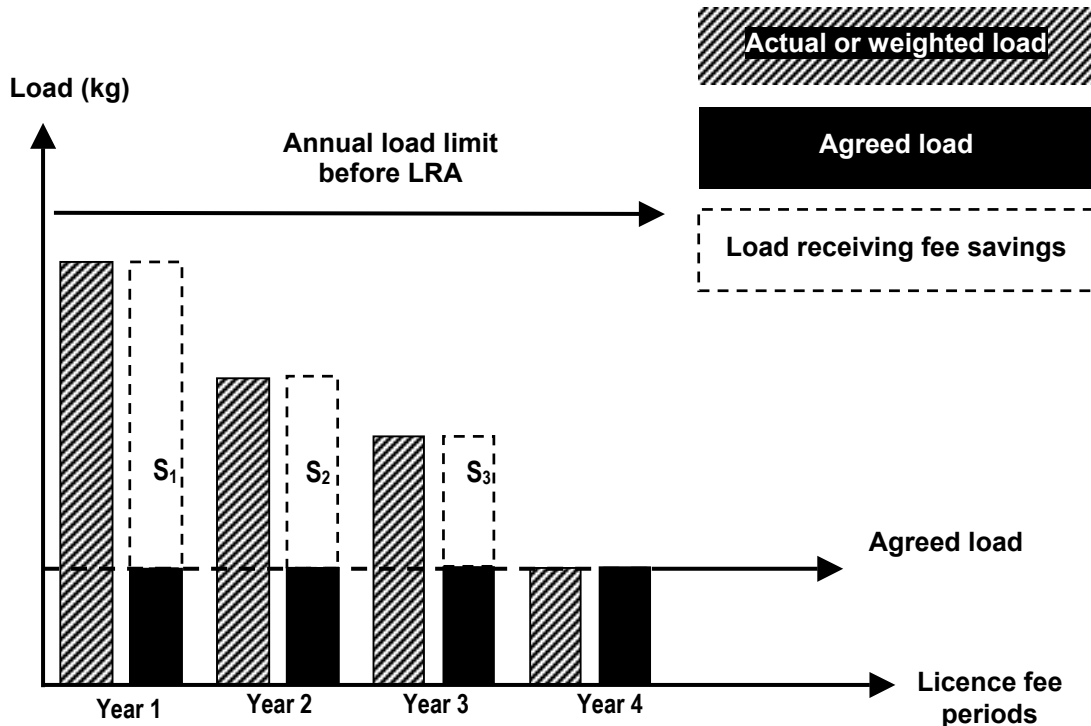


Figure 1: How the fee savings add up under an LRA

Calculating fees to be repaid

The fee reductions granted to the licensee under an LRA are based on achievement of the agreed load before the end of the agreement. The agreed load in the LRA will also become the ongoing annual load limit at the conclusion of the LRA. When this does not happen, a higher, less restrictive limit has to be set after the LRA has ended and the licensee is required to repay any excess fee reductions they have received, with interest.

The fees to be repaid depend on how many years of fee reductions have already been received and the level of the maximum load. For the purposes of calculating fees payable by the licensee on the termination or expiry of the LRA under clause 28B of the POEO (General) Regulation, the 'maximum load' for each assessable pollutant is the lowest reported actual load over the agreement period, minus 1%. A simple interest penalty is payable on the amount calculated at the rate of 20% per annum.

Of course, if the licensee has received no fee reductions, no repayment is required.

Penalty for late repayments

Licensees must make any necessary repayments no later than 60 days after a written request from DEC to do so. Late repayments are charged 5% simple interest on the outstanding amount for every whole fortnight overdue.

Debt recovery and financial assurances

If a licensee fails to make the repayments as required, DEC will normally seek to recover the outstanding monies through standard debt recovery procedures.

There may also be some instances where DEC will want some form of financial assurance to cover the financial risk of any excess fee reductions not being paid. The use of financial assurance would be negotiated and agreed prior to the commencement of an LRA. For example, where a licensee had previously failed to comply with the terms of an LRA and wished to enter into another, DEC may first require a financial assurance.

Terminating or changing an LRA

A licensee can terminate an LRA at any time by advising DEC in writing. Termination of an LRA will require the licensee to repay fee reductions already received. An LRA will be terminated automatically if the licence to which the LRA relates is revoked, suspended or surrendered. DEC can also terminate an LRA under other circumstances as set out in the POEO Regulation.

Once an LRA is finalised, neither the agreed load nor the period of the agreement can be changed.

A supplementary LRA can be entered into if the licensee wants to reduce the annual load of other assessable pollutants not already covered by an agreement or for the same pollutant from a different activity at the premises.

What happens when ...?

... the licensee's scale of operations or activity type changes

If the scale of operations or type of activity changes, causing emissions of different assessable pollutants, the licensee may choose to enter a new LRA for these new pollutants.

Since a new agreed load will become the ongoing load limit at the end of the agreement, licensees should ensure that the continued achievement of the agreed load will be sustainable.

... a licence is transferred

If a licence that incorporates an LRA is transferred and the new licensee does not want to continue with the agreement, it is the responsibility of the new licensee to terminate the agreement(s). If they do not, the LRA will continue.

If the new licensee elects to terminate the LRA, they must repay excess fee reductions as outlined above. The prospective licensee may wish to consider these costs in negotiations with the existing licensee.

When DEC transfers a licence, a letter is sent to both the old and new licensees advising that the LRA has also been transferred.

Public Register

LRA details are not required to be placed on the Public Register of environment protection licensing activities on the DEC website. Only the variation notice that outlines the applicable agreed loads will be placed on the website.

More information

Inquiries about LRAs should be directed to the nearest DEC regional office or the DEC POEO Service Centre (phone 133 372).

For general information on the environment protection licensing system, visit the DEC website at www.environment.nsw.gov.au/licensing