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30 October 2015

Strategy and Reform
Licence Documentation
Department of Environment Regulation
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Dear Sir/ Madam

SUBMISSION: FEEDBACK ON DRAFT LICENCE DOCUMENTATION

Thank you for the opportunity to make comment on the draft documents listed below.

- Draft Guideline for applications (works approvals and licences)
- Draft Application form: works approval/ licence
- Draft Licence template
- Draft Conditions library
- Plus:
- Separation Distances

Kwinana Industries Council (KIC) values its relationship with DER and consequently is keen to actively participate in the document review process.

The comments that follow result from a specially convened meeting of the KIC's Environment and Planning Committee (EPC), and represent the collegiate views of KIC's member companies. It is possible (but unlikely) that individual company submissions may to some degree be at odds with the views expressed here. It is also possible that some paragraphs are reflected in the submissions of other member companies. The content of the KIC submission is a reflection of our member companies' views, and their logos are depicted in this document.

Please also note that:

- KIC endorses the specific comments submitted by Alcoa in relation the DER Draft Contaminated Sites Guideline: Identification, reporting and classification of contaminated sites in Western Australia.
- KIC submitted the following information about 'Separation Distances' via email, but it is copied into this document in order to keep all of the KIC submission consolidated. The specific comment is located at the end of this document



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There were some general points of principle that were established during our discussions, and which were not attributable to any one specific document in the suite to be reviewed. These principles are:

- A more holistic set of conditions to be reviewed would be a better outcome than the limited set that have been published to date. Those published are essentially non-contentious, and a set akin more to those that were to be addressed via the REFIRE process should be the goal.
- Regulator effort would be best directed to those areas of most concern to it, being those organisations with the greatest environmental and social risk, based on the application of a sound risk-based methodology. It is apparent that some DER officers have not yet achieved the appropriate level of skill upon which to base their assessments. It might be worth considering the use of well-skilled third party individuals to undertake this work, and to pass on their knowledge.
- It is important to keep the communication channels open and active, and this is being achieved to date. Members of the EPC expressed value in having Kelly and Agnes meet with them, and I have been asked to request that they attend a future meeting to discuss the outcomes (and changes) of the consultative process.
- Adjusting forms that cross reference so that duplication is avoided will improve the efficiency of the process.
- There were a small number of generic key messages that the members wanted to communicate to DER, these being:
 - Members support the ongoing regulatory review process and the current level of consultation.
 - A written guide setting out how proponents fill out application forms would be very useful, ensuring quality applications and reduced rework, thus having a positive impact on DER resources. This would include specifying what data and how it is provided.
 - The overall focus should be on environmental risk.
 - There is room to improve the risk assessment process by adding the opportunity for input from other stakeholders who may have knowledge or specific data in the assessment phase. It is a weakness in the current process because their input is not included, leaving the potential for DER to carry out their assessments in isolation, possibly by people with limited skill sets.

Specific comment on the draft documentation follows:

Guideline for applications (works approvals and licences)

Working on-line is problematic as the whole document needs to be completed before it can be saved. Redoing lost work is costly in terms of time taken to complete the forms.

Given that some companies are multinationals, the internal approvals process could create unnecessary complexity as the internal company delegations are most likely in place to empower the Australian-based personnel to complete the 'Director sign off'.

Under Part 5, it is unclear how the DER will be using this information to inform decisions. If the DER proposes to deny a licence or works approval based on information provided in this part of the application, it would be reasonable for the DER to publish its assessment criteria and any tools used to assist with that assessment.

If an organisation lists several administrative non-compliances in a single year (Part 5), where each has no environmental impact, what does this actually say? How does it inform DER decisions? There could be a requirement for the DER to publish the assessment criteria and tools used in the assessment. In addition, the application of a time-based window could be useful in asking about offences committed, eg 5 years.

Application form: works approval/ licence

It would be more efficient to just include the guidance comments on the application form rather than have two documents that need to be cross referenced.

The information requested in the draft form is aimed at new proposals. If the application is for a licence amendment, renewal or works approval for an already licensed premises could there be an option to only complete sections relevant to the proposed changes?

The new application form is cumbersome and time consuming for existing licence holders. It has to be completed without interruption, otherwise it is a 'start again' scenario. An iterative on-line form could be the goal, where only those parts that are necessary for the application are required to be completed, or changes added.

Part 1.2 - Directors change over time, sometimes quite often. Keeping this up to date is problematic.

Part 1.6 – Is the term "Authorised Representative" actually defined? What does the term mean in reality? Does this person have to be a director, who can be hard to get a hold of, who can be 'too busy' working on other more relevant matters to him or her?

Part 3 – In reference to "proposed activities," should the reference on the form be marked as only relevant for works approvals or new licences? Where information is required for existing premises there could be a part covering "current activities". For works approvals it would be more appropriate to clearly define the requirement to describe both activities and potential impacts (Part 6) associated with construction and with proposed operations as these can be different.

Part 4 - Should this be marked as only relevant for works approvals and/or new licences?

Part 5.3 – Can the non-compliance be limited to details of breaches that have resulted in material or serious harm and for a specified time frame (e.g. in the last 10 years). The comments are also relevant to Part 5.2.

Part 5.5 – Instructions in guidance document – we suggest a specific question is added here that states: Does the licensee have a certified environmental management system? If yes provide certification number. If no outline the environmental management systems implemented (or proposed to be implemented for new licence/works approval).

It is unclear how DER will use the information related to a "fit and competent operator" in its decision making process. For example will the information be fed into the risk assessment process and ultimately into the decision making process?

Part 6 – The answer should be "no" to all of part 6 if risks are managed properly. Proposed change to the wording of 6.1-6.3 *Are there emissions to (air/surface water/land) that have the **potential** to pose a risk to public health or the environment?* The DER could consider changing the question to include the beneficial use definition (as defined in EP Act) which covers public health and environment?

Part 6 – 6.4 Listing other incidents arising from activities that pose a risk to public health and the environment is already covered under emissions to air/water/land, so is not required. Dangerous Good storage is managed by DMP under Dangerous Good licence therefore does not need to be duplicated here.

Part 6 - 6.5 Waste accepted or stored on the premises – every site will have storage of waste such as general putrescible/recyclables. Discharges or emissions from inappropriate storage of waste, is covered under emissions to air/water/land. Propose to remove reference to the word 'stored' onsite. Premises is required to be licensed to accept certain categories of waste and as such would need to risk assess it to prevent a potential incident.

Part 7 – there should be consistency on the definition of "sensitive receptor" across DER documentation and regulation. The definition "sensitive land uses" under the DER Guidance Statement: Separation Distances is:

Sensitive land uses are land uses, beyond the prescribed premises boundary, where people live or regularly spend time and which are therefore sensitive to emissions from industry. Sensitive land uses include, but are not limited to residences, hospitals and nursing homes, short-stay accommodation, schools, childcare and other educational facilities and some public buildings. The sensitivity of a land use may also be proportionate to the size of the population affected by the activity

This differs from the definition under part 7 of the DER Guideline for Applications

Part 7. Siting and location			
INSTRUCTIONS:			
7.1: You must include detail on proximity to receptors including waterbodies and places where people live or regularly spend time. Within means that the premises are at a distance less than the specified separation distance; see DER's Guidance Statement: Separation Distances. Instructions are set out in Attachment 7.			
	No	Yes	
7.1	Are there premises located within specified separation distances for sensitive receptors?	<input type="checkbox"/>	<input type="checkbox"/>
7.2	Are the premises located within or adjacent to any sensitive surface water, groundwater or terrestrial areas?	<input type="checkbox"/>	<input type="checkbox"/>
Attachment 7 completed		<input type="checkbox"/>	

Our recommendation is that DER separate out 'receptors' and 'land uses', such as:

- Sensitive Environmental Receptors
- Sensitive land uses (as per separation distances guideline statement)

Is information on potential risks of noise required or is this no longer considered in works approval/licence applications because there is a requirement to comply with the noise regulations?

Is light spill a potential risk that will no longer be considered by the DER?

Part 8 – It is too early to comment on this section due to the risk assessment model/framework not being available to use as a reference.

At the presentation provided by the DER during an industry briefing on 30 September 2015 it was stated that environmental standards and licence limits would be set by the DER. With current resourcing, it remains unclear how DER is going to be able to achieve this, or whether the DER has the necessary expertise across all emission types to do this meaningfully.

Will DER take into account the receiving environment as an opportunity to vary from a published standard? This allows for variation of emission standards if it can be justified with additional data/modelling.

Part 9 – Fee calculation – can the licence fee calculation component of ILS be retained so that the applicant can submit the calculated fees on line rather than just use it as a calculator and then have to transpose all the same information onto the form? The guidance notes provide less information than the previous DER guidance regarding what costs should be included in the proposed works costing. As a minimum it would be helpful for applicants if DER points applicants to Section 5c of the regulations to assist in determining what costs to include?

'Capital cost' for the purpose of calculating the works approval fee should be limited to that cost associated with building or modifying equipment directly related to emissions. For example, costs of levelling land, engineering design, equipment purchase and engineering consultancy costs should not be included. In most instances, these aspects of a 'development' are already subject to fees imposed by the relevant local government planning and building licence processes.

Part 10 – In the interest of waste reduction DER should move away from hard copies and just require electronic copies. This would represent a significant efficiency opportunity for the DER and industry.

Licence Template

Part 12 – We propose allowing an additional 30 days (30 to 60) because the processing and subsequent receipt of laboratory data can take this long. Many industries undertake a detailed internal audit against licence conditions at the end of the year to ensure the Directors are provided with evidence of compliance before they sign off of the AACR. A 60 day turnaround is a more practical time frame, ensuring there is sufficient time to complete a thorough internal audit.

Part 14 – Propose wording change *'Reports or information must be provided in the format required in the CEO request'*

The DER has indicated its intention to focus more on industry supplied environmental management plans. Where a management plan is referenced in a licence it should refer to the "current version" of that plan, to avoid the need to resubmit and have approved by the DER whenever the plan is amended.

There is an opportunity for the DER to focus part of its annual site audits on submitted management plans, rather than verifying statements made in the AACR process which adds limited value. By focusing on the management plans, which should be addressing the significant environmental aspects of a particular operation, the DER will be meeting its intended objective to adopt a greater risk based approach to licensing.

Conditions Library

What is the risk assessment process – will this be published? The same risk matrix is currently used in EAR and Decision Document? Will these still exist?

There is no allowance for instances where groundwater monitoring bores may not be able to be sampled. We have examples of where bores that have previously been able to be sampled have then not been able to be sampled because (for example) they have dried up or they have been damaged. There needs to be some flexibility to allow for a sample to be missed if there is an adequate reason.

DER previously committed to publishing a complete copy of the Conditions Library for detailed review however the Conditions Library actually released contained a very limited set of conditions that didn't include any potentially contentious conditions. This is seen as a missed opportunity.

Guidance Statement on Separation Distances

The following comments are made broadly in relation to the Kwinana Industrial Area and (in this case) specifically in relation to the Phoenix Energy WTE proposal and its interaction with the regulatory reform process, particularly the 'Guidance Statement on Separation Distances'.

On the whole, the changes are very good. They have removed a lot of the issues that Industry has been highlighting for some time including streamlining the reporting processes for licences and no generic licence conditions which are already covered by legislation.

The concern that I have is the separation distance (<http://www.der.wa.gov.au/our-work/consultation/299-http-www-der-wa-gov-au-consultation-gs-separation-distances>) for electricity generation (5km) is the highest possible which implies it has the furthest impact on receptors of all of the categories (even incineration of waste is only 1km). It is also not consistent with the SO₂ modelling of the Kwinana Industrial Area which shows that even if all of the existing power generation is run on coal at maximum rates, simultaneously, under the most unfavourable weather conditions, there will not be an impact outside of the buffer zone.

The specified separation distances come from these documents: <http://www.epa.vic.gov.au/our-work/publications/publication/2013/march/1518> and http://www.epa.wa.gov.au/EPADocLib/1840_GS3.pdf

The Victorian EPA document was developed for dust and odour emissions; there is no mention of gaseous emissions. There is also no references to power stations, or to electricity generation in the document.

The WA EPA document has a table which includes electricity generation (see extract below) but it also has these statements about industrial areas:

- A site-specific technical study to determine separation distances is generally expected in the case of a major heavy industrial estate, or a general industrial estate where emissions may result in cumulative impacts.
- A sound site-specific technical analysis is generally found to provide the most appropriate guide to the separation distance that should be maintained between an industry or industrial estate and sensitive land use.

Industry	Description of industry	DoE Licence or Registration category (*)	Key Government agencies for advice or approvals	Impacts					Buffer distance in metres and qualifying notes
				Gaseous	Noise	Dust	Odour	Risk	
Electric power generation	generating electricity – 20 megawatts or more (total) for natural gas & 10 megawatts or more (total) for other fuels	✓ (52)	DoIR, WRC	✓ NOx, SOx	✓	✓			3000-5000, depending on location & size
	natural gas-fuelled electricity production – more than 10, but less than 20, megawatts total	✓ (84)	DoIR, WRC	✓ NOx	✓				2000-3000

Hence it appears that the new guidance statement lost its context when the distances were extracted from it and DER has taken the worse-case rather than applying situation specific factors.

The following are extracts from the new guidance statement on separations distances:

- Separation distances will be used by DER to inform risk assessments to support decision-making for applications for works approvals and licences.
- Separation distances will also be used by DER to inform risk assessments for the renewal of licences and for inspection and compliance activities in relation to existing prescribed premises.
- 3. Modelling of odour, dust or air emissions submitted by applicants will not, in itself, be sufficient to demonstrate a lower risk of the activity to public health or amenity.
- 6. Applications for works approvals or licences for premises which do not meet separation distances will be considered as having a higher risk to public health and amenity and will require a more detailed risk assessment. If a works approval or licence is granted for these premises, instruments are likely to contain a higher level of regulatory control, such as management or process conditions.

The draft Guidance Statements on the **Environmental Risk Assessment Framework** and **Regulatory Controls** have not been released yet so it is difficult to know what the "more detailed risk assessment" and "higher level of regulatory control" will entail.

To conclude. KIC is appreciative of the efforts of the DER in consulting with industry on its reforms. We will continue to contribute positively to the process and encourage those involved to continue in the manner which is clearly apparent.

Yours sincerely



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Director

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