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11 November 2015

Licence Documentation Strategy and Reform
Department of Environment Regulation
Locked Bag 33
CLOISTERS SQUARE WA 6850

Dear Sir or Madam

Re: Consultation Paper - Licence Documentation (September 2015)

Thank you for the opportunity to comment on this paper and its associated materials. MBS Environmental offers the following comments for your consideration.

1. APPLICATION FORM – DISCLOSURE BY DIRECTORS

Section 5 of the proposed application form includes a section “Fit and Competent Operator”, which requires company directors to disclose breaches under the *Environmental Protection Act 1986* and similar legislation. While we agree that company directors should be aware of and take ownership of environmental compliance, the scope of disclosure appears very broad, and we believe the requirement would be impractical without some kind of limitation.

We understand that this matter was raised at a briefing session on 30 September and in the briefing summary document, DER stated it “*will take into account the materiality of non-compliances [and] acknowledges that Section 5 of the application form is currently too broad and will be revised*”. DER will help applicants if it provides clear guidance on what it considers material in this context.

DER further stated that the requirement is:

- “*not intended to apply to a board of directors of major companies*”. Why not, if directors of smaller companies have to disclose? And what counts as “major”?
- “*but intended as a way to look behind the corporate veil in specific circumstances*”. What kind of circumstances would those be?

As they stand, these statements seem at odds with DER’s stated principles of competitive neutrality and transparency.

2. APPLICATION FORM – ASSESSMENT OF RISK

Section 6 of the proposed application form comprises several questions of the structure “Are there [*emissions or risk of incidents*] that pose a risk to public health or the environment?” and providing tick-boxes for a “yes” or “no” answer. Unless qualified in some way, these questions seem to serve little purpose as the answer almost always has to be “yes”. The questions also do not state whether the risk is determined with or without controls (i.e., inherent or residual risk).

We suggest that the questions should be qualified, perhaps in a form such as “*Is there a significant risk to public health or the environment [from emissions or incidents] without appropriate controls?*”.

Section 6 also refers the applicant to a table in Attachment 6, where risk sources, emissions, receptors and controls are to be listed. We anticipate that this is only a summary table, with these matters to be addressed in detail in the proposed Assessment Framework documentation (not yet available for consultation); otherwise the table seems too simplistic allow these matters to be addressed at an appropriate level of detail for any but the smallest and simplest of projects.

In general we believe that attempting to reduce complex assessments to a form is at best difficult and suggest that the process would be better served by an application document checklist and guideline that proponents can use to prepare a complete, well-formed document that addresses the relevant matters at the appropriate level of detail. This is the approach DMP has taken with its checklists and guidelines for Mining Proposals and Mine Closure Plans, and one that we think has been generally successful for both industry and regulators.

3. OTHER MATTERS

We further note that:

- The application form guideline includes Sections 2.5, 2.6, 2.7 and 3.3, relating to details of clearing however these sections are missing from the proposed application form itself, we expect this is a simple error. Regardless, we take it that a separate Clearing Permit application will still usually be required for projects that involve clearing, as set out in the current (June 2005) DER guidance on the Native Vegetation Clearing Regulations and exemptions.
- The consultation paper says that “significant issues [with the existing licensing processes] and their adverse effect on industry have been considered in the preparation of the licence documentation”, but does not really set out what these issues or adverse effects are, or how the proposed changes will address them.
- The consultation paper says that “DER will be applying the application form immediately”. This is not really consultation. In general it appears that this reform program is being rushed to meet arbitrary internal deadlines, rather than make long-term improvements.
- The proposed application process relies heavily on the *Assessment Framework*, which has not yet been released, and consequently we are not able to properly comment on the proposed changes. We look forward to reviewing the framework when it is available.
- DER is working on “improvements to enable online application submissions”; until then, applications are to be both emailed and posted, which seems a regressive step. Perhaps the document upload part of ILS, at least, could be retained until a new system can replace it, or DER could allow documents to be submitted via Dropbox or one of many other popular file hosting services.
- The proposed licence template incorporates consolidated summary tables of monitoring and reporting requirements, which we believe is an improvement on the current format and will be helpful to operators. Also, the proposal to remove annual reporting as a blanket condition appears sensible, especially for smaller, simpler or lower-risk operations.
- The Conditions Library, Environmental Standards, and preference for outcome-based decisions, if well implemented and sensibly applied, could improve the licensing process and outcomes for industry, community and environment, however little detail is available at this time.

We trust that these comments are of help. Please contact me on 08 9226 3166 or dobrien@mbsenvironmental.com.au if you have any questions.

Yours sincerely

MBS Environmental



David O'Brien

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