

Licence documentation  
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To whom it may concern,

Firstly, Wesfarmers Chemicals, Energy and Fertilisers (WesCEF) would like to express its support for the ongoing regulatory reform process and thank the DER for its ongoing commitment to consulting broadly on the various documents being prepared to support this reform. Some positive changes are becoming apparent and WesCEF is confident that the final product will bring significant benefits to both industry and the DER.

WesCEF appreciates the opportunity to provide comment on the following draft documents:

- Guideline for applications (works approvals and licences)
- Application form works approval/licence
- Licence Template
- Conditions Library

WesCEF also provides comment on the presentation provided by the DER during an industry briefing on 30 September 2015.

Prior to making specific comment on each of the items noted above, WesCEF makes the following general statements.

Regulatory and enforcement action should be preferentially directed to those industries and organisations that represent the greatest environmental and social risk, by applying sound risk based methodology. The current DER licensing risk assessment process appears to only include DER officers, sometimes with limited knowledge about a specific site or operation. The risk assessment process could be enhanced by including stakeholders outside of the DER that may have knowledge or specific data useful in making a meaningful assessment of risk



posed by individual projects (e.g. the proponent itself or its consultants). This would likely result in a more representative outcome.

It is disappointing that the DER didn't fulfil its previous commitment to publish the REFIRE Conditions Library, instead publishing only a very small subset of non-contentious conditions. WesCEF remains hopeful that other conditions will be released for targeted consultation at a later date, which will allow the DER to gather valuable industry feedback prior to wholesale adoption of the conditions into licences, leading ultimately into a better product.

## **WesCEF review of DER Draft Licence documentation**

### **DER – Application form: works approvals and licences**

The current online application form can't be saved until all section of the form has been completed, which is problematic, in particular for more detailed applications.


The information requested in the draft form seems to be aimed at new proposals and is limiting for current licence holders. In the first section the form asks the applicant to select the option for the application and if the application is for a licence amendment, there is no further section in the form to document the details of the proposed changes. If the application is for a licence amendment, renewal or works approval for already licensed premises, there should be an option to only complete sections relevant to the proposed changes.

In the case of licence amendments the current DER P4 form which is used for an application to transfer or amend a licence, works approval or registration is more appropriate. There is currently no other section in the new template to list the actual amendment or reason for amendment. If an amendment is required, maybe the form should be updated to complete the first part of the template then skip to another section that provides the DER with the detail of the proposed amendment?

The new application form is cumbersome and time consuming for existing licence holders. The application form needs to be completed in one go because the form can't be saved and continued at a later stage. WesCEF understands from the industry briefing session that DER is looking at a contemporary business system given the limitation of the ILS. WESCEF recommends that a web based application system be prioritised. Even a simple form-style system would allow existing licensee information to be pre-populated so that only updates or changes need to be added for amendments, licence renewals and works approvals

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. For example, if an organisation lists five administrative non-compliances in a single year, each with no environmental impact, what does this mean? It would be useful to apply a timeframe – e.g. Have you committed of an offence in the last five years?

Part 10 - Director sign off should be limited to Australian based personnel to avoid unnecessarily complicating the process. Alternatively, authorisation could be provided by the most senior Australian based officer within an organisation. This ensures adequate scrutiny is given by senior management

### **DER – Guideline for applications form works approval/licence**

General comment –It would be easier to just include the guidance comments on the application form rather than have two documents that need to be cross referenced.

Part 1.2 - Directors details – are all directors to be listed? This can change over time.

Part 1.6 - Authorised representative – is this defined somewhere? What evidence is required to demonstrate that someone is an authorised representative?


Can the DER clarify who is authorised to represent the applicant? - . E.g. a company Director or someone authorised by a company director to sign on behalf of the organisation. Can authorisation be done by email or is a specific form required?

Part 3 - “proposed activities” should this be marked as only relevant for works approvals or new licences? – If information is required for existing premises there should 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 – The licence non-compliance could have been a technical non-compliance or non-compliance with no environmental harm. In the case for companies that have multiple licensed premises that have been in operation since 1986 this may amount to numerous breaches. It does not seem practical or appropriate to list all breaches. It would be more appropriate to require 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.

If the answer to Parts 5.1-5.4 is yes , then the applicant is required to outline what this experience is requirement to list directors and/or all company directors for companies with existing licences with the DER is valid. Also, if the answer to 5.5 is yes, do all directors need to complete Attachment 5 if the applicant does have previous experience or only key



personnel with previous experience in relation to the activities in the proposal? If the answer to 5.5 is no, does the applicant then need to explain how expertise will be provided for the project?

What does a fit and competent operator look like? What are the criteria? What happens if you don't meet the requirements? It is not yet clear how the DER will use the information related to a "fit and competent operator" in its decision making process. E.g. will it be fed into the risk assessment process and ultimate decision making process?

Part 5.5 – Instructions in guidance document – suggest a specific question under Part 5 that asks: 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).

Part 5 Summary - If the answer is no to all sections of part 5 (no previous experience, no legislative breaches and no suspension and or cancellation of works approvals/licences) how does the DER propose to manage the risk of an applicant without any prior environmental experience?

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. This is already covered under emissions to air/water/land so is not required. Dangerous Good storage is managed by DMP under Dangerous Good licence so 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.

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 7 – The instructions in the works approval/licence guideline don't quite align to the separation distances guideline document. It would be much clearer if part 7 of the DER





Guideline for Applications used the wording 'sensitive land uses' rather than receptors because receptors isn't even mentioned in the sensitive land uses definition. It might be clearer if the DER separates out receptors and land uses such as:

- Sensitive Environmental Receptors (water bodies – groundwater; surface water; rivers; oceans; etc.)
- Sensitive land uses (as per separation distances guideline statement)

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.

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.

### **DER – Licence Template**

Part 12 – Propose changing the submission of the AACR from 30 to 60 days to allow adequate time to receive monitoring data from the laboratory and conduct QA/QC on data received where monitoring may have occurred at the end of the year. Also WesCEF and other industries typically carry out a detailed internal audit against licence conditions at the



end of the year to ensure Directors are provided with evidence of compliance before sign off of the AACR. A 60 day rather than 30 day timeframe will ensure there is sufficient time to complete a thorough internal audit.

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 focussing 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.

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

### **DER – Conditions Library**

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

What triggers the need for re-approvals, management plans etc.?

There is no allowance for instances where groundwater monitoring bores may not be able to be sampled. WesCEF has examples of where bores that have previously been able to be sampled have then not been able to be sampled because 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 appropriate reason.

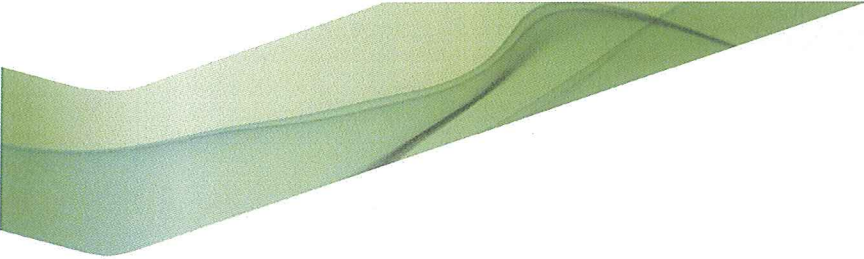
DER previously committed to publishing a complete copy of the conditions library for detailed review however the conditions library actually released contained a very limited set of conditions that didn’t include any potentially contentious conditions. This is seen as a missed opportunity.

### **DER – Licence documentation briefing session**

#### **Separation distances**

Definitions: **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.

What does this mean? If there is only one house then it is not considered a sensitive land use? This is not how the noise regulations are applied. It is not appropriate to place less significance on a single residence compared to a more densely populated area as the level of acceptance from individuals can be quite different. It is a significant reputational risk for DER and industry to undervalue the significance of an impact on a single dwelling.

### **Application of Environmental Standards**

During the presentation WesCEF asked whether the environmental standards related to discharge limits for water would reference/apply existing guidelines such as ANZECC. WesCEF also asked whether the licensee would be responsible for commissioning a consultant (where necessary) to derive appropriate discharge limits based on these guidelines.

DER advised that DER would derive the standards. WesCEF supports the development of site specific licence limits that consider the receiving environment. Could add consideration of cumulative impacts? Not generic limits or standards that are no risk based/impact assessed. Given DERs Regulatory Principle to apply risk and evidence based conditions this approach doesn't seem consistent.

WesCEF has concerns that the DER doesn't have the resources to determine limits. Businesses typically have the data and information about their sites available for consultants to use. Consultants with specific scientific expertise can provide data and models to assist in determining the risk and proposing appropriate limits based on the risk to the receiving environment.

How will the DER determine an acceptable limit for conditions if a target exists? What opportunity exists for industry to discuss/risk assess/challenge limits set by the DER?

### **Licence documentation**

Will environmental registrations go through the reform process or will they remain unchanged?

### **Regulatory Principle – consistency and transparency**

A "high level of consistency and transparency" is proposed as a Regulatory Principle. WesCEF support this approach but is concerned that a summary of administrative changes outlined by the DER (<http://www.der.wa.gov.au/our-work/licences-and-works-approvals/307-administrative-changes-implemented-within-the-department-of-environment-regulation-der>) states:

***Discontinuation of Peer Review: Unless otherwise agreed in writing by the Executive Director, Licensing and Approvals, the process of peer reviewing industry regulation***



*instruments by officers other than the preparing officer's line manager is not to be undertaken.*

WesCEF considers that a review process, whether peer review or central review is an important step in ensuring consistency in licensing. WesCEF has experienced inconsistencies in licensing between different regional areas and has to rely on escalation in the DER to try and address this. There is a risk if individual officers determine limits, without the peer review process, there may be inconsistencies between licences for similar industries.

**Regulatory Principle – Risk Based Regulation**

WesCEF supports risk based regulation. WesCEF considers that the key to successful implementation of risk based regulation is to ensure that the assessment process is objective and consistent. See comment above regarding consistency which is relevant to risk assessments also.

Please contact me if you would like to discuss any aspect of the submission in greater detail on 9411 8523 or [rppotter@wescef.com.au](mailto:rppotter@wescef.com.au)

Yours Sincerely,



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