



**Draft Guidance Statement on  
Environmental Standards for Division 3,  
Part V *Environmental Protection Act 1986***

**Department of Environment Regulation**

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## About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014, the value of Western Australia's mineral and petroleum production was \$114.1 billion. Iron ore accounted for approximately \$65.1 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$25.1 billion, with gold third at \$8.7 billion.<sup>1</sup>

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed almost 20 per cent of estimated total state revenue in 2014-15, or around \$5.34 billion.<sup>2</sup>

As at March 2015, there was approximately \$179 billion in resources sector projects committed or under construction in Western Australia and a further \$118 billion in proposed or possible projects.<sup>3</sup>

## Recommendations

CME recommend:

- The Guidance Statement is updated to state "*Environmental Standards will specify the types of emissions or categories to which they apply.*"
- The Guidance Statement is updated to ensure the application of Environmental Standards is limited to circumstances where:
  - The proponent cannot demonstrate an acceptable environmental risk/outcome without the application of an Environmental Standard; and
  - The risk cannot be managed by existing regulatory instruments.
- The Guidance Statement is updated to prevent amendments to existing licences as a result of Environmental Standards (i.e. introduction of improvement conditions) in situations where the risk to the environment has not changed.
- The timeframe for meeting Environmental Standards in accordance with an improvement condition to be negotiated between Department of Environment Regulation (DER) and the proponent.
- DER clarify what other standards will be applied to works approvals and licences.
- DER removes the statement allowing the CEO to reserve his/her discretion to not apply Environmental Standards because "*the environment requires a higher level of protection than would be provided by the Environmental Standard.*"

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<sup>1</sup> Department of Mines and Petroleum (DMP), *Mineral and Petroleum Industry 2014 Review*, 2015, [www.dmp.wa.gov.au/1525.aspx](http://www.dmp.wa.gov.au/1525.aspx), p. 1

<sup>2</sup> Government of Western Australia, *2015-16 Budget, Budget Paper No. 2 Volume 2*, [www.ourstatebudget.wa.gov.au/Budget-Papers](http://www.ourstatebudget.wa.gov.au/Budget-Papers), pp. 541 & 593

<sup>3</sup> DMP, 2015, *loc. cit.*

## Context

CME welcome the opportunity to review and provide comment on the Department of Environment Regulation (DER) draft Guidance Statement on Environmental Standards for Division 3, Part V *Environmental Protection Act 1986* (EP Act) (Guidance Statement).

In December 2014, CME lodged a submission on DER's Guidance Statement on Regulatory Principles. This document outlines high-level principles of good regulatory practice guiding DER's environmental regulation functions.

This Guidance Statement builds on those regulatory principles by providing greater detail on how DER will apply Environmental Standards relating to applications for, and conditions on, works approvals and licences granted under Part V of the EP Act.

CME support the Guidance Statement, however, recommends the consideration of several matters outlined below.

## Activities or Types of Emissions

Environmental Standards will specify the “*activities*” or “*types of emissions*” to which they apply. The Guidance Statement provides no further details on defining these parameters.

An emission is defined in the EP Act as a:

- Discharge of waste;
- Emissions of noise, odour or electromagnetic radiation; or
- Transmission of electromagnetic radiation.

An activity is not defined in the EP Act. Instead, the EP Act refers to prescribed premises or categories in accordance with Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations).

To ensure consistency with existing legislation, CME considers Environmental Standards should align with the types of emissions or categories in accordance with the EP Act and Regulations.

**CME recommend the Guidance Statement is updated to state “*Environmental Standards will specify the types of emissions or categories to which they apply.*”**

## New Applications and Existing Licensed Premises

In principle, Environmental Standards are supported by CME, however, the application of these regulatory instruments must complement a risk and outcomes-based approach to industry regulation.

The Guidance Statement states “*Applications must demonstrate that they meet the relevant Environmental Standards.*”

The prescriptive nature of standards could result in the Department moving away from risk and outcomes-based conditioning.

For example, the draft Environmental Standards currently out for comment, outline the location and siting of facilities, infrastructure requirements, operating methods and monitoring requirements. The technology, process and site selection may differ for each proponent and CME is concerned this approach may diminish flexibility and impact competitiveness of industry participants.

While the Guidance Statement includes a statement for the DER Chief Executive Officer (CEO) to reserve his/her discretion to not apply Environmental Standards “*where applicants or licensees wish to propose deviations from the Environmental Standard and the CEO is satisfied that such deviations achieve the same or better level of protection for public health*”

and the environment” CME is concerned this discretion will only apply to the CEO and not the DER Licencing Officers and Managers who have overall responsibility for the development and sign off of works approvals and licences.

If the aim of the Department (in accordance with the Guidance Statement on Regulatory Principles) is to implement a risk and outcomes-based regulatory framework, proponents should be allowed to demonstrate, at the earliest possible opportunity, an acceptable environmental risk/outcome can be achieved prior to the application of Environmental Standards.

Furthermore, CME is concerned the application of Environmental Standards adds a level of unnecessary complexity to works approvals and licences where legislation and other regulatory instruments are already in place.

Regulation and guidance already exists to manage impacts of noise, air quality, contamination and waste. DER should ensure overlap between Environment Standards and other regulatory instruments are minimised as much as possible.

**CME recommend the Guidance Statement is updated to ensure the application of Environmental Standards is limited to circumstances where:**

- **The proponent cannot demonstrate an acceptable environmental risk/outcome without the application of an Environmental Standard; and**
- **The risk cannot be managed by existing regulatory instruments.**

The Environmental Standards will be used to inform decisions on changes to existing licences to achieve acceptable environmental outcomes. In accordance with the DER Guidance Statement on Regulatory Principles, improvement conditions “*may be included to transition existing activities to Environmental Standards or to address unacceptable risks to public health or the environment*”.

CME is concerned an unintended consequence of the Environmental Standards may be retrospective approvals which can result in large capital costs to businesses to upgrade facilities where the risk to the environment has not changed. CME considers a level of certainty is required for companies building an asset for the duration of the project.

Proponents should also be afforded a degree of flexibility in meeting improvement conditions and provided an opportunity to present how they intend to meet the Environmental Standards or provide an alternate approach. In doing so, reasonable and appropriate transition periods should be applied by DER following consultation and agreement with the proponent.

**CME recommend the Guidance Statement is updated to prevent amendments to existing licences as a result of Environmental Standards (i.e. introduction of improvement conditions) in situations where the risk to the environment has not changed.**

Further, **CME recommend the timeframe for meeting Environmental Standards in accordance with an improvement condition to be negotiated between DER and the proponent.**

## **CEO Discretion**

The Guidance Statement outlines the CEO reserves his/her discretion to not apply Environmental Standards “*where standards that are more stringent than those under the Environmental Standard are required to protect public health of the environment because environmental circumstances have changed, or the environment requires a higher level of protection that would be provided by the Environmental Standard.*”

CME is concerned this will result in the inappropriate application of standards to works approvals and licences. The example of DER inappropriately applying National Environmental Protection (Ambient Air Quality) Measures in regional areas was highlighted in CME's Submission [Draft Variation to the National Environment Protection \(Ambient Air Quality\) Measure Impact Statement](#), to the National Environment Protection Council in October 2014. The Guidance Statement should include further information or list other standards which may be applied to works approvals and licences.

**CME recommend DER clarify what other standards will be applied to works approvals and licences.**


The Guidance Statement is unclear on how the Department will assess changes to environmental circumstances or determine if the environment requires a higher level of protection. CME questions if this should apply to proponents if their activities do not increase the risk to the environment.

**CME recommend DER removes the statement allowing the CEO to reserve his/her discretion to not apply Environmental Standards because “*the environment requires a higher level of protection than would be provided by the Environmental Standard.*”**

## Conclusion

CME welcome the opportunity to review and provide comment on the draft Guidance Statement on Environmental Standards and looks forward to ongoing engagement with DER.

If you have any further queries regarding the above matters, please contact Kirrillie Caldwell, Policy Adviser - Environment, on (08) 9220 8507 or [k.caldwell@cmewa.com](mailto:k.caldwell@cmewa.com).

Authorised by	Position	Date	Signed
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