



Draft Guidance Statement – Regulatory Principles

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 2013-14, the value of Western Australia's mineral and petroleum production was \$121.6 billion, accounting for 91 per cent of the state's total merchandise exports. Furthermore, the value of royalties received by the Western Australian government from the resources sector increased by 33 per cent from the 2012-13 financial year to reach a record \$6.98 billion in 2013-14.

Recommendations

- CME recommend Figure 1 is updated to include Environmental Standards on Figure 1: Hierarchy of Regulatory Instruments under 'Guidance Materials'.
- CME recommend DER work with Environment Protection Authority (EPA) and Department of Mines and Petroleum (DMP) to determine a cross-government approach to risk assessments for proponents triggering approvals under Part IV and Part V of the *Environmental Protection Act 1986* (EP Act), as well as approvals under the *Mining Act 1987* (Mining Act) to ensure duplication is minimised as much as possible.
- CME recommends that DER develop guidance material outlining the risk-based approach to licensing and approval decisions.
- CME support the introduction of Environmental Standards providing DER apply the principles related to risk-based regulation.
- CME consider publishing of *standard, optional* and *sector specific* Re-Engineering for Industry Regulation and Environment (REFIRE) licence conditions and the *REFIRE Compliance Guide* should be made an immediate priority by DER.
- CME recommend the development of subsequent guidance material for licence conditions and approvals in accordance with the Council of Australian Governments (COAG) Condition Setting Principles.
- CME recommend DER update the 'Regulatory Principles' to include a principle/s regarding interaction with other Decision Making Authorities, specifically for managing timeframes and maintaining consistency with condition setting.

Context

Background

CME welcome the opportunity to review and provide comment on DER's Guidance Statement – Regulatory Principles (Guidance Statement).

This Guidance Statement has been developed to outline the agency's high-level principles for good regulatory practices and guide its environmental regulation functions under the EP Act. These functions include the licensing, approvals, compliance and enforcement in relation to emissions and discharges, waste, noise and clearing of native vegetation.

CME consider the Guidance Statement will assist DER with increasing the effectiveness, efficiency and transparency of their regulatory functions. The Guidance Statement will also provide as a useful tool for addressing the issues currently associated with the REFIRE program.

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

Hierarchy of Regulatory Instruments

The background of the Guidance Statement includes a hierarchy of instruments governing environmental legislation administered by DER which is useful for industry. However, Figure 1 doesn't include the application of Environmental Standards which has been included further down in the section 'DER's Regulatory Principles'.

Given the establishment of Environmental Standards set out the required levels of environmental performance for regulated activities, **CME recommend Figure 1 is updated to include Environmental Standards on Figure 1: Hierarchy of Regulatory Instruments under 'Guidance Materials'.**

Risk-based Regulation

In principle, CME support a risk and outcomes-based approach for environmental regulation in Western Australia. A risk and outcomes based approach to regulations is being adopted or considered by the Environmental Protection Authority (EPA) and the Department of Mines and Petroleum (DMP).

DER should avoid duplication of the risk assessment required for proponents triggering Part IV approval under the EP Act and approval under the Mining Act.

CME recommends DER work with EPA and DMP to determine a cross-government approach to risk assessments for proponents triggering approvals under Part IV and Part V of the EP Act, as well as approval under the Mining Act to ensure duplication is minimised as much as possible.

The principle that licensing and approval decisions, including any conditions imposed on any approval, will be proportionate to the level of risk is supported. However, the application of risk must be applied clearly and transparently.

CME recommends that DER develop guidance material outlining the risk-based approach to licensing and approval decisions.

Application of Environmental Standards

The Guidance Statement 'Regulatory Principles' outline DER's intent to establish general Environmental Standards. These Environmental Standards will set out the required levels of environmental performance for regulated activities and may relate to the siting, design, construction, undertaking, operation, emissions, monitoring and closure of activities.

Environment Standards should be developed through detailed consultation with the resources industry, with the final standards being clear and justifiable.

CME also questions the appropriateness of applying general Environmental Standards across various commodities and locations in Western Australia. DER has reiterated their risk and outcome-based approach for environmental regulation further down in section ‘Appropriate Conditions’.

CME supports the introduction of Environmental Standards providing DER apply the principles related to risk-based regulation.

Appropriate Conditions

DER’s commitment to the development of works approvals and licence conditions which are justifiable, clear and enforceable is supported by CME. This commitment will resolve many of the issues which have arisen from the REFIRE program.

Notwithstanding the above, DER is yet to publish the finalised *standard, optional* and *sector specific* REFIRE conditions (for both works approvals and licences) for industry consultation. Additionally, a copy of the *REFIRE Compliance Guide* previously mentioned to industry hasn’t been released.

In line with DER’s ‘Regulatory Principles’ related to consultation and transparency, **CME consider publishing of *standard, optional* and *sector specific* REFIRE licence conditions and the *REFIRE Compliance Guide* should be made an immediate priority by DER.**

CME is aware of DER’s intent to develop further guidance material for licence conditions and approvals. While outside of the scope of this Guidance Statement, CME supports the development of this further guidance material with industry input.

The development of the abovementioned guidance material should also be consistent with the Council of Australian Governments (COAG) Best Practice Regulation 2007 condition setting principles to ensure consistency across federal and state environmental agencies. These principles are shown in Table 1.

As such, **CME recommends the development of subsequent guidance material for licence conditions and approvals in accordance with the COAG’s Condition Setting Principles.**

Table 1 – COAG Condition Setting Principles

First regulatory step	<ul style="list-style-type: none"> Establish a case for action before addressing a problem.
Necessary	<ul style="list-style-type: none"> Regulates a realistic prospect of significant environmental harm. Scientifically rigorous and objective base.
Non-duplicative	<ul style="list-style-type: none"> Conditions are one tool amongst many available to the Department.
Proportionate	<ul style="list-style-type: none"> Minimum regulation to achieve outcome. Reflects level of environmental risk.
Equitable	<ul style="list-style-type: none"> Consistent level of control across activities posing equivalent risks.
Performance based	<ul style="list-style-type: none"> Outcomes, rather than prescription. Understandable, measurable and verifiable.
Efficient and effective	<ul style="list-style-type: none"> Minimise regulatory burdens. Greatest degree of compliance at the lowest cost to all involved.
Legally defensible	<ul style="list-style-type: none"> Plain English, clear and simple. Within power and enforceable.

Consultation and Transparency


DER need to be seen as leading the assessment of environmental impacts for its environmental regulation functions and managing the timeframes when dealing with other Decision Making Authorities. Additionally, DER needs to display consistency in decision making (including comments from Decision Making Authorities) and applied conditions, while preventing duplication (e.g. monitoring and reporting) as much as possible.

CME recommends DER update the ‘Regulatory Principles’ to include a principle/s regarding interaction with other Decision Making Authorities, specifically for managing timeframes and maintaining consistency with condition setting.

Conclusion

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

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

Authorised by	Position	Date	Signed
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