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Dear Sir/ Madam

CONSULTATION PAPERS ON DRAFT GUIDANCE STATEMENTS
Division 3, Part V, Environmental Protection Act 1986

- Regulatory Assessment Framework;
- Environmental Risk Assessment Framework;
- Regulatory Controls

Comment on Draft Guidance Statements

Thank you for the opportunity to submit Kwinana Industries Council's (KIC) comments on the three Guidance Statements, and for your consideration in providing our comments beyond the close-off date.

Can I say at the outset the Department is to be congratulated for taking on this review process, and can I reiterate that it has the full support of the KIC and its members.

Our submission represents the responses from our member organisations combined into a collective response, with the content of the final document being agreed upon. I am aware that members may have made their own submissions and these are to be regarded as separate to that from KIC.

KIC's specific comments have been listed under the particular Guidance Statement heading, but there are a few comments of a general nature which I would like to deal with first, these being:

- The guidance statements must be used by the reviewing officers consistently. Historically industry has noticed that these have been used subjectively to varying degrees by individual officers.
- There is concern the documents are being released for review in isolation to the other interconnected documents. The overall review process is strongly supported however due to the complexity of the interconnectedness of the documents, it is becoming difficult to 'keep up'. It is difficult to make comprehensive comment as we are being 'drip-fed' documents when they are in fact holistically entwined.
- It is good to see the transparent methodology coming through, as industry supports the use of a transparent, risk based methodology.

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- Due to their very nature, qualitative risk assessments can be very subjective. How does the DER intend validate and verify the company risk assessments submitted? We recognise the risk assessment will be subjective, but we wonder what are the processes for getting a good level of consistency within the DER – what is your risk assessment review process?
- We are starting to see a transparent methodological risk assessment emerging. Previously it has been unclear as to the level of detail and assessment the proponent has had to provide when making a submission. Previously proponents would make their submission, and the DER would make their own 'private' risk assessment. This has led to significant back and forth exchanges in information and subsequent project delays. A proponent would make one assessment and DER would make their own separate form of risk assessment. The single risk assessment process proposed to be adopted by DER would significantly reduce any of the associated delays that are being experienced. The bottom line here is that if the proponent and DER follow the assessment processes as proposed, both parties should come up with the same assessment result.
- Where there is a variation will this be subject to a consultative review process?
- If 'material' change is to trigger a licence or works approval, and it is, there needs to be a bit more definition around this would be good from a consistency perspective.

Environmental Risk Assessment Framework

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- Will DER reasonably consider site specific criteria if developed by a specialist?
- The assessment must be based on the proponent's own risk assessment (DER does not have the expertise to do this, as DER's role is to validate).

Page 2 – No.6; and

Appendix 2 (Risk Assessment Matrix and Criteria); and Appendix 4 (Risk Assessment Template)

- Proponents want to see where the DER assessment of risk specifically varies (if it does vary) from that of the proponent. Proponents want it to be made clear to them where the variation is. They want to see it written into the guidelines that DER will clearly show the differences, and why.
- There is a need to clarify DER's (almost) final position, and to then release this to the proponent prior to finalising.
- Also, it is considered to be important that the DER 'decision-making' document is released prior to the actual decision because in effect, this is the finalisation of the conditions.
- Risk assessments should be looking at residual risk as opposed to inherent risk – ie don't the controls that are in place (or proposed to be in place) exist to reduce the extreme risk? (ref. Appendix 2)
- Separation distances – measured at boundary or receptor – this was unclear. It needs to be explicitly stated in the assessment framework as to how the assessor came to the assessment level. DER should describe how they came to their value assessments. Appendix 5. Where will discharge criteria be applied? For example, this might be at the boundary of the premises or at the sensitive receptor, or some point in between the two?
- Table 4A. Ambient monitoring requirements – when will they be triggered, the guidelines and standards quoted are not hard and fast.

- Table 1. DER has misapplied these and is not allowing dilution through additional distance separation. ANZECC guidelines are for ambient levels in the receiving environment, but these have been applied as premises discharge criteria.
- We don't want to be stuck with these numbers as we don't know how they will be applied.

Regulatory Assessment Framework

- Define DER's interpretation and application of 'material change' when determining the need for a Works Approval. This is not covered in the Draft Guideline, but it should be.
- Item 1 (e). Include advising 'neighbours'. Proponents would like the opportunity to consult directly with neighbours before being approached 'out of the blue' by DER.
- Item 3. There is a high system reliance on every section to be filled out. This is often unnecessary, so it needs to be clearly stated what needs to be filled out, to what extent per what type of licence/ works approval – focus only on that which is relevant. We understand this is already in train within DER, and this is supported.
- Item 3 (c). Fourteen (14) days is too short for the several months that the new system is bedding down. It is very short anyway, given internal company approval processes. The length of time should be at the minimum twenty-one (21) days. The other aspect to this is that if a deadline is missed, is there a 'black out' period precluding the proponent from re-applying?
- Item 4 (page 3). What is the appeals process if a decision to refuse has been given to the proponent? This needs to be stipulated prior to not losing the right to appeal. List the appeal process in the Framework. We suggest there be a separate 'box' in the flow chart for appeals. What appeal rights exist if a refusal has been given?
- Item 9. DER is quick to 'stop the clock'. How will DER track compliance within their timeframes, and what public exposure will this get? In other words, are there internal KPIs and will they be reported. (If it is not measured, it's not important)
- Item 1 (e). List the Department for Planning, and the associated planning tools that they are responsible for – Special Control Areas, Buffers (SPP 4.5), etc. DER should avoid placing an industry in conflict with a pre-existing hierarchical approval eg State Agreement Act conditions are a higher order than local environmental risk conditions. The hierarchy should be clarified to avoid future conflicts.

Regulatory Control

- The definition of the various chemicals has not been defined in Appendix 1.
- Table 1 should be in risk assessment framework – not the controls part. It would be useful to use the Risk Assessment Framework earlier in the process, and we suggest incorporating it in the Environmental Risk Assessment Framework.

To conclude, might I make one further suggestion. It would be good to see the results of the effort Industry is putting into this consultative process. Might I suggest that there be a table produced, which is a summary of all comments received and includes the Department's response. It would be circulated only to those who took the time to provide the feedback in the first instance. It will keep us feeling all warm, fuzzy and loved.

We look forward to continuing to support DER's review process.

Yours sincerely



CHRIS OUGHTON
Director