

Mr Jason Banks  
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Department of Environment Regulation  
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Our Ref: EM04-2014-0030

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Dear Mr Banks

**SUBMISSION ON DRAFT GUIDANCE STATEMENTS: REGULATORY  
ASSESSMENT FRAMEWORK, ENVIRONMENTAL RISK ASSESSMENT  
FRAMEWORK, AND REGULATORY CONTROLS**

Thank you for the opportunity to provide input to your draft Guidance Statements: Regulatory Assessment Framework, Environmental Risk Assessment Framework and Regulatory Controls, outlining the new risk-based approach to regulating prescribed premises.

Given the Environmental Protection Authority (EPA) and the Department of Environment Regulation (DER) have responsibilities for the administration of the *Environmental Protection Act 1986* (EP Act), it is important that our agencies work together to ensure close alignment across the respective roles.

In particular, I consider it is important that the approach taken by the EPA and the regulatory approach of your Department are complementary and meet the statutory requirements of the EP Act. On this basis, I provide the following high level comments on the three draft Guidance Statements.

Also attached some more detailed comments on technical aspects of the Guidance Statements.

Minimising discharges

A principle of the EP Act is of waste minimisation – “all reasonable and practicable measures should be taken to minimise the generation of waste and its discharge to the environment.” This principle is applied throughout the EP Act in the administration of Parts IV and V. Specifically, in relation to the regulation of prescribed premises, section 51 of the EP Act states that “the occupier of any premises who does not take

all reasonable and practicable measures to prevent or minimise emissions, from those premises commits an offence.”

It is not clear in the draft Environmental Risk Assessment Framework Guidance Statement how the assessment process considers the principle of waste avoidance/minimisation.

The draft Guidance Statement describes a risk-based approach which appears to be centred on not exceeding set criteria. Under this approach, proponents may propose controls which achieve a ‘high’ risk rating, which appears to be acceptable under the proposed risk assessment framework, without considering whether additional practicable controls could reduce the risk rating to moderate or low. The draft Guidance Statement does not appear to include a requirement for occupiers to take all reasonable and practicable measures to minimise emissions.

I note, however, that your final Guidance Statement: Regulatory Principles (July 2015), states that “DER will establish Environmental Standards that set out the required levels of environmental performance for regulated activities based on the hierarchy of preventing, controlling, abating and mitigating pollution and environmental harm.”

The relationship between the risk assessment framework and the primary and secondary regulatory controls described in the Guidance Statement on Regulatory Controls is also not apparent.

Including in your framework considerations such as “best practice” or as “low as reasonably practicable” through reference to primary controls (particularly infrastructure requirements) would address this concern and ensure consistency with principles of the EP Act. It is the responsibility of industry to avail itself of good technology that will not only meet applicable standards, but ensure that emissions are as low as reasonably practicable and will not impact the surrounding environment.

### Environmental criteria

I recognise that the application of environmental criteria is a principle that will underpin DER’s regulatory functions. However, the health and ecosystem criteria outlined in the draft Environmental Risk Assessment Framework Guidance Statement do not outline the most relevant criteria for Western Australia (WA). In effect the use of the criteria, without a comparison between the emission and the background environmental quality, may result in the authorisation of an emission with a higher level of contaminants than would have otherwise been allowed.

In WA, specific criteria have been developed by various authorities to take into account local conditions. Where they exist, they are preferable over the blanket use of national or international criteria that do not take into account local background levels. Examples where specific criteria has been developed for local conditions include Peel-Harvey

Estuary, Perth Coastal Waters, Cockburn Sound, and Kwinana and Goldfields air sheds. The Department of Water has established water quality criteria for many of the water resources it manages through Water Quality Improvement Plans.

Using criteria without taking into account the receiving environment is inconsistent with the concept of taking all reasonable and practicable measures to prevent or minimise emissions.

I provide some specific examples in the detailed comments attached.

### Cumulative impacts

It is unclear in the draft Guidance Statements how cumulative impacts will be considered during the assessment of works approvals and licences. An assessment approach should include consideration of how each individual emission is considered in the context of cumulative emissions, and whether this will meet the appropriate standards. Allowing individual occupiers to emit up to a standard could result in cumulative emissions above appropriate standards and above acceptable ambient concentrations.

I recommend in the revision of the draft Guidance Statements that the approach includes an assessment of cumulative emissions.

### Part IV and Part V Interaction

Based on the comments I have provided above, the OEPA has concerns that the approach as outlined in the draft Guidance Statements will create an inconsistent approach between Part IV and Part V of the EP Act.

The OEPA therefore recommends that:

- the risk-based framework should include the concept of taking all reasonable and practicable measures to minimise emissions, such as the use of best available technology;
- the environmental criteria used in the draft Guidance Statement should be appropriate for WA conditions;
- the acceptability of the emissions should be assessed in the context of an appropriate criteria, the quality of the receiving environment (i.e. background levels), the emissions from the activity and the emission reduction technology being proposed; and
- the Guidance Statement should give consideration to how cumulative impacts should be considered.

In light of the interaction between our regulatory responsibilities, I look forward to our agencies working closely to address these issues in finalising your Guidance statements. Please don't hesitate to contact me should you wish to discuss any aspect of these comments.

Yours sincerely



Anthony Sutton  
**A/General Manager**

14 March 2016

cc: Chairman, Environmental Protection Authority