



**SOUTHERN  
PORTS  
AUTHORITY**

16 Parliament Place (PO Box 1049), West Perth WA 6005

Telephone: 1800 787 033

Email: [enquiries@southernports.com.au](mailto:enquiries@southernports.com.au)

Web: [www.southernports.com.au](http://www.southernports.com.au) | ABN 30 044 341 250

Our Ref: SPA/DOC/2016/155 SPA/FILE/2014/44 NF/NP/AL/PM/DG

23 February 2016

Jason Banks  
Director General  
Department of Environment Regulation  
Locked Bag 33  
Cloisters Square  
EAST PERTH WA 6850  
Email: [StrategyandReform@der.wa.gov.au](mailto:StrategyandReform@der.wa.gov.au)

Dear Jason,

#### **ENVIRONMENTAL REGULATORY REFORM: RISK-BASED APPROACH**

Thank you for your invitation to comment on the Department of Environment Regulation (DER)'s Environmental Regulatory Reform. Southern Ports Authority (SPA) endorses the increased emphasis on risk-based approaches and submits the following comments on the three guidance statements recently released by DER; namely the Regulatory Assessment Framework; Environmental Risk Assessment Framework and Regulatory Controls.

##### **1. Regulatory Assessment Framework**

***1(f) consider responses from interested parties in DER's assessment of risks to public health, public amenity or the environment.***

SPA has concerns that interested parties' opinions can unduly influence quantitative analyses of risk unless there are specific means or controls within the Framework to provide a balanced assessment of all factors.

Ideally the Framework should be able to consider stakeholder opinion without it resulting in unrealistic restrictions on industry. For example, conditions may be imposed which are disproportionate to the level of risk of an activity as a consequence of interested parties' stridently arguing for assessment of multiple worst case scenarios based on assumptions despite the presence of more accurate information based on experience.

## 2. Environmental Risk Assessment Framework

**Appendix 1:** Within "Establishing the Context" the consideration of the site and operator history should also incorporate review of the performance of any improvements implemented by an applicant following a historical incident. Should it be shown the substantive improvements undertaken by the applicant have been effective then the existence of a historical issue (i.e. past breach or non-conformance) should not overly influence the risk analysis of a new, independent activity or lead to stricter limits on acceptability than would otherwise be the case.

**Appendix 2:** The risk matrix could be enhanced by the provision of temporal or spatial scales.

**Appendix 5 Table 4A, Nickel and its compounds.**

It is requested the specified annualised criteria of  $0.003 \mu\text{g}/\text{m}^3$  at  $0^\circ\text{C}$  (and  $0.0027 \mu\text{g}/\text{m}^3$  at  $25^\circ\text{C}$ ) be removed for purposes of licencing.

The referenced Department of Health Ni assessment for Esperance criteria, which is based on the World Health Organisation (WHO) guidelines, is overly conservative. These guidelines were developed for a specific type of nickel (nickel subsulphide) found in smelting operations which many World authorities contend are not relevant to nickel concentrates. The WHO guidelines have since been superseded in Europe and North America. See attach Memorandum to DER dated 15 September 2015.

Application of criteria specific to nickel concentrates, and not nickel subsulphides, would ensure setting of justifiable licence limits (conditions) and would provide a better representation of the actual risk of harm to public health or the environment.

## 3. Regulatory Controls

The process of applying risk controls should be a consultative process between DER and the proponent and this consultation should be embedded in the environmental regulatory process.

The consultative process must capture site specific factors relating to the surrounding environment and the process itself to enable a realistic risk assessment to be conducted. More detailed assessments should include a site visit by the DER particularly where the assessment officer(s) are not familiar with the site or the processes described in a works approval or licence application. Choosing a risk control without consultation from a library of conditions would appear to be a perfunctory measure that is unlikely to contribute to effective risk controls.

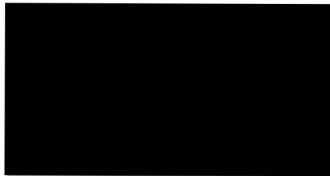
*Regulatory Controls (Cont'd)*

**Appendix 1 Table 2:** SPA supports DER's preference for using primary controls over secondary controls and also supports the inclusion of controls on product quality. Controls on product quality via a "specification on product" could serve to enhance the ability of Port operators and stevedores to manage, under contractual arrangements, the dust and odour generating characteristics of products presenting to the Port.

Product quality will also influence the infrastructure requirements (primary controls) of the handling and storage of the product. For these reasons, product quality could be considered at a higher level of control.

SPA will continue to review DER Guidance Statements to better determine the likely impact on SPA workloads, benefits and costs of implementing the proposed regulatory processes and will provide feedback to assist with the ongoing reforms.

Yours sincerely



Nicholas Fertin  
**Chief Executive Officer**