



Licence Amendment Report

Licence Number L4533/1967/15

Licence Holder Cockburn Cement Limited

ACN 008 673 470

File Number: DER2015/000597

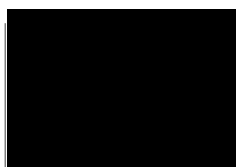
Premises Cockburn Cement Limited Munster

Being Lot 450 on Plan 249735 Rockingham Rd,
Lot 50 on Diagram 6065, Lot 88 on Plan 22127, Lot
246 on Plan 226117, Lot 5 and Lot 4 on Diagram
18525 and Lot 311 on Plan 300770 Russell Road,
MUNSTER 6166

Date of Amendment 30 May 2019

Amendment

The Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (DWER) has amended the above Licence in accordance with section 59 of the *Environmental Protection Act 1986* (EP Act), as set out in this Licence Amendment Report. The report constitutes written notice of an amendment to Licence L4533/1967/15 in accordance with section 59B(9) of the EP Act.



Ed Schuller

Director Industry Regulation

Regulatory Services

an Officer delegated under section 20 of the *Environmental Protection Act 1986* (WA).

Licence Amendment

This amendment is made pursuant to section 59(1)(a) of the *Environmental Protection Act 1986* (EP Act) to amend Licence L4533/1967/15 granted to Cockburn Cement Limited (CCL) for its cement and lime manufacturing plant in Munster. The amendment is the result of the settlement of the judicial review proceedings that were scheduled to be heard in the Supreme Court of Western Australia on 20 February 2019 but were discontinued as outlined below.

Details of the amendment are set out in the form of a revised licence document.

Risk based Licence review

In 2016, the Department carried out a comprehensive risk-based review of Licence L4533/1967/15 for CCL's cement and lime manufacturing plant in Munster. The review considered air quality and odour findings from several studies, including a community odour survey and odour verification plan undertaken by CCL and assessed by the Department, as well as, a Department ambient air quality study.

On 12 December 2016 the Department issued CCL with an amended licence with new risk-based conditions and specified controls for stack emissions, dust and odour. The amended licence was appealed under section 102 of the EP Act and the appeals were determined by the Minister for Environment on 5 December 2018.

The Minister allowed the appeals in part and required the Department to amend the licence in relation to controls for dust, odour, groundwater and stormwater, complaints management and reporting requirements. The Minister also required the Department to amend the licence duration such that it expires on 30 June 2021. The Minister's Appeal Determination is available at www.appealsconvenor.wa.gov.au.

On 11 January 2019, the Department gave effect to the Minister's determination and granted amended licence L4533/1967/15 to CCL.

Judicial Review Application

Prior to the granting of the amended Licence however, on 21 December 2018 CCL commenced judicial review proceedings in the Supreme Court of WA on the grounds that it considered certain aspects of the Minister's Appeal Determination to be beyond power and accordingly void. The judicial review proceedings concerned:

- (a) New Condition 2 (as it appeared in the draft amended licence, which became Condition 18B in the final amended licence); and
- (b) Table 5 and Condition 23.

On 15 January 2019, CCL filed a further application in the Supreme Court to vary its initial application for judicial review to challenge the validity of the CEO's 11 January 2019 decision to grant the amended licence.

The scheduled hearing date of 20 February 2019 was postponed to allow the parties further time to reach an out of court settlement.

Judicial Review Settlement

It was agreed that CCL would withdraw its application for judicial review on the basis of the licence being amended and the provision of advice to CCL to clarify its obligations under the challenged conditions.

In forming a view to settle the case and amend the licence, the Department considered a number of matters including the impacts to local community, the intent of the Minister's Appeal decision and the timeframes and quality of information that would be eventually provided to the Department under the conditions of the licence.

With respect to Table 5, Condition 23 involving the installation of dust monitors for ambient dust, the condition remains unchanged. The Department will provide advice to CCL with respect to the location of new dust monitors through the installation process.

Condition 18B, which requires the carrying out of a comprehensive investigation into the source and cause of the odour has been amended to remove the requirement for peer review of the investigation report and to extend the time allowed for submission of the investigation report by one month.

The Department considered that removal of the requirement for peer review in Condition 18B has the advantage that it allows the Department, rather than CCL, to select and appoint an appropriate independent peer reviewer. The Department, through its various Directorates often carries out and obtains peer review which will allow for the peer review to be conducted in a quicker manner than CCL may otherwise be able to.

In agreeing to amend the licence to extend time for submission of the investigation report, the Department noted that impacts were typically lower in winter months and that the extra time would allow CCL a better opportunity to ensure the quality of the investigation report. CCL were made aware of the Department's interpretation of the conditions through the State's written submissions to the Supreme Court and by way of discussion and correspondence. The Department expects that CCL will comply with those conditions to the best of their ability.

As a part of the amendment, DWER has agreed to give CCL 90 days from the end of the annual reporting period to submit its Annual Audit Compliance Report (AACR) – see Condition 47. The annual reporting period has been amended to be the Calendar Year. It was previously the Anniversary Period of 31 March to 30 March the following year, with CCL submitting its AACR by the end of April each year.

CCL's Annual Environment Report (AER) for the previous Calendar Year (Condition 46) must be submitted each year by 1 April. By aligning the reporting period for both reports to Calendar Year and providing additional time for collation and analysis of annual data, CCL will be able to submit its annual fee application using an accurate calculation of emissions from the previous Calendar Year and reporting period. It also enables both the AER and AACR to be prepared and submitted simultaneously.

There is no change to when CCL's annual fees are due.

Applicant's comments

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CCL was provided with the draft Decision Report and draft amended Licence on 30 May 2019 in accordance with section 59B of the EP Act. On the same day, CCL gave notice that it does not intend to make any representations.

Decision

In response to the discontinued judicial review proceedings, and in accordance with Section 59(1)(a) of the EP Act, the Delegated Officer has amended condition 18B of the Licence. CCL will now have one extra month for completion of its investigation into the source and cause of odour from the active kilns.

The Department will then provide the CCL report to an independent third party to conduct a peer-review. The peer review report (with the exception of commercially sensitive information) will be made publicly available once it is complete.

As a part of this amendment DWER has also made some minor administrative changes. Table 18 of the Licence has been amended to correctly reference conditions for reporting purposes. The due date for the Annual Audit Compliance Report (AACR) as per condition 47 of the Licence, has also been extended by 60 days as requested by CCL. The reference to 'Annual Period' and 'Anniversary Period' have been replaced by 'Calendar Year' in conditions 12, 46 and 47 to reflect the new reporting period.

Amendment history

Table 1 provides the recent amendment history for Licence L4533/1967/15.

Table 1: Recent Licence amendments

Instrument	Issued	Amendment
L4533/1967/15	30/03/2012	Amendment to the Licence requiring the installation of a baghouse, the operation within PM limits and to conduct an odour survey.
L4533/1967/15	14/12/2012	Licence amendment to give effect to Minister for Environment's determination of appeals against the amendment to the Licence issued in March 2012
L4533/1967/15	30/03/2015	Extension of expiry date of the Licence
L4533/1967/15	17/03/2016	Extension of the expiry date of the Licence.
L4533/1967/15	9/12/2016	Licence amendment in response to a review of the Licence and odour investigations completed in 2013
L4533/1967/15	11/1/2019	Licence amendment is in response to the Minister for Environment's determination of appeals against the amendments to the Licence issued in March and December 2016.
L4533/1967/15	30/5/2019	This amendment in response to the outcomes of the discontinued judicial review proceedings in February 2019 as well as correcting some minor administrative errors and amendment of the annual reporting period to align it with the calendar year.