



Setting Conditions

Part V, Division 3, Environmental Protection Act 1986

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Objective

To provide guidance on the Department of Environment Regulation's (DER) setting of conditions on works approvals and licences issued under Part V, Division 3 of the *Environmental Protection Act 1986* (EP Act).

Background

All works approvals and licences are issued with conditions that are related to the purposes of the EP Act to prevent, control, abate or mitigate pollution or environmental harm. The grant of a works approval or licence provides a defence to proceedings against offences such as pollution or environmental harm. Under the EP Act, non-compliance with a condition of a works approval or licence is an offence.

For DER to undertake its regulatory duties effectively, it is essential to ensure that the Chief Executive Officer (CEO) sets conditions which are within the CEO's powers under the EP Act and that conditions meet relevant legal and regulatory requirements.

DER's [Guidance Statement: Regulatory Principles](#) sets out principles of good regulatory practice that guide the exercise of DER's environment regulation functions. In accordance with the regulatory principles, this Guidance Statement provides specific guidance on the setting of conditions for works approvals and licences.

This Guidance Statement should be read together with relevant DER guidance statements, including the [Guidance Statement: Regulatory Principles](#) and the draft [Guidance Statement: Environmental Standards](#).

Under Part V of the EP Act, DER regulates industries based on emissions and discharges. Where any proposals are also significant or strategic proposals then they will also be assessed by the Environmental Protection Authority (EPA) under Part IV of the EP Act.

DER notes that the *Environmental Assessment Guideline for recommending environmental conditions* published by the EPA (revised August 2015) (EPA Guideline for Conditions) relates to environmental conditions for EPA assessments. Consistent with the EPA Guideline for Conditions, DER also prefers outcome-based conditions and will apply these in preference to management-based conditions or specified-actions or procedures conditions.

DER notes that in the EPA's assessment of complex and significant proposals, the EPA may require environmental management plans. DER's risk-based assessment will only require environmental management plans in particular circumstances, as the preferred outcome-based conditions will be to limit the emissions and discharges of the activities (either directly or by proxies).

Legislation

The general power to impose conditions on a works approval or licence is set out in section 62 of the EP Act, which provides:

62. Works approval and licence conditions

- (1) A works approval or licence may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm.*
- (2) Section 62A sets out some kinds of conditions that may be attached to a works approval or licence and further kinds of conditions may be prescribed, but nothing in that section or the regulations prevents other conditions from being attached.*
- (3) Subject to section 60 a condition is not to be inconsistent with an approved policy or a prescribed standard.*

Section 62A provides a non-exhaustive list of types of conditions that may be imposed.

Guidance statement

1. Works approvals and licences may be granted subject to conditions that are:

- (a) **valid**, meaning that conditions will:
 - be considered by the CEO to be necessary or convenient for the purposes of the EP Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm;
 - be consistent with any approved policy or Environmental Standard, except for variations approved in accordance with DER's *Guidance Statement: Environmental Standards*;
 - be fairly and reasonably related to the activities within the category of prescribed premises the subject of the licence;
 - give effect to a lawful delegation of authority (i.e. not require something to be done to the satisfaction of a person who has no power to set conditions); and
 - be sufficiently final and certain and not contain secondary approvals;
- (b) **enforceable**, meaning that conditions will be:
 - worded in a clear and certain manner;
 - clear and precise on the outcome that must be achieved or the measures that are required; and
 - worded so that the requirements for compliance are clear;
- (c) **risk-based**, meaning that conditions will be proportionate to the level of risk (likelihood and consequence) that the activity poses to public health and the environment;
- (d) **outcome-based** where practical and appropriate, meaning that:
 - emissions from prescribed premises will be controlled by conditions that specify emission limits;
 - limits may be imposed on 'indicator' or 'surrogate' substances or parameters to represent a group of pollutants or to indirectly regulate emissions (e.g. carbon monoxide as an indicator of combustion efficiency);
 - emissions will be limited to levels which have been assessed as not representing an unacceptable risk to public health or the environment; and
 - process and management-based conditions will only be imposed where outcome-based conditions do not adequately address the risks of adverse impacts to public health or the environment;
- (e) **site-specific**, meaning that the unique elements and requirements of each site (i.e. the premises and the sensitive receptors in the receiving environment) will be considered when they materially alter the risks of adverse impacts to public health or the environment; and
- (f) **documented and justified**, meaning that the decision to grant works approvals or licences subject to conditions will be justified in a published decision document.

- 2. Works approvals and licences may be granted subject to monitoring and reporting conditions in order to:**
 - (a) validate assessment predictions and provide assurance over the effectiveness of outcomes, process, management and improvement conditions; and
 - (b) discharge the CEO's accountability for public reporting purposes.
- 3. Works approvals and licences may be amended by the CEO to include conditions in order to:**
 - (a) transition existing activities to the required levels of environmental performance set out in Environmental Standards; and
 - (b) address risks of adverse impact to public health or the environment.
- 4. Works approvals and licences will not be contrary to, or otherwise than in accordance with, an implementation agreement or decision under Part IV of the EP Act.**
- 5. Conditions will not unnecessarily duplicate requirements imposed on licensees directly by the EP Act or another written law.**

Implementation

The content of this Guidance Statement will guide the development and implementation of regulatory policies and procedures and will be reflected in DER's regulatory decision-making processes.

Commencement

This Guidance Statement is to take effect from 24 September 2015.

Review

This Guidance Statement is to be reviewed no later than as soon as practicable following the fifth year of its commencement.