



Draft Guidance Statement on Mine Dewatering

Department of Environment Regulation

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore accounted for approximately \$54 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$24 billion, with gold third at \$9 billion.¹

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed over 16 per cent of estimated total state revenue in 2015-16, or around \$4.4 billion.²

As at September 2015, there was approximately \$171 billion in resources sector projects committed or under construction in Western Australia and a further \$110 billion in proposed or possible projects.³

Recommendations

CME recommends:

Scope of Guidance Statement

- The scope of the Guidance Statement is expanded by removing the listed exclusions and the Department of Environment Regulation (DER) allows the proponent to demonstrate whether the risk to public health and the environment is adequately addressed by the regulation of the Department of Water (DoW).

Legislation

- The Guidance Statement includes Category 9 *Coal mining: premises on which water is extracted and discharged into the environment to allow coal mining* as a prescribed activity.
- DER modify, as a priority, the prescribed categories in Schedule 1 of the *Environmental Protection Regulation 1987* (EP Regulations) to remove dewatering which meets the criteria under this guidance statement from regulation under the *Environmental Protection Act 1986* (EP Act).

Implementation

- DER clarifies how the CEO will assess and determine whether the risks to public health and the environment are adequately addressed by the regulation of DoW. All decisions by the CEO are to be documented and transparent.

¹ Department of Mines and Petroleum (DMP), 2015, *Quick Resource Facts*, www.dmp.wa.gov.au/About-Us-Careers/Quick-resource-facts-3961.aspx

² Government of Western Australia, 2015, *2015-16 Budget, Budget Paper No. 2 Volume 2*, www.ourstatebudget.wa.gov.au/Budget-Papers

³ DMP, 2015, *Latest Resources Investment Release*, www.dmp.wa.gov.au/About-Us-Careers/Latest-Resources-Investment-4083.aspx

Roles and Responsibilities

- DER work with DoW to clarify their roles and responsibilities of regulating dewatering discharge during operations. DER and DoW should consult with one another and the proponent prior to a decision being made.

Context

CME welcomes the opportunity to review and provide comment on the Department of Environment Regulation (DER) draft Guidance Statement on Regulation of Mine Dewatering (Guidance Statement).

The Guidance Statement aims to administratively remove duplication of the regulation of mine dewatering operations and the disposal of surplus mine dewater, between the DER and Department of Water (DoW).

CME strongly supports the intent of the Guidance Statement to remove regulatory duplication and streamline environmental approvals. However, CME recommends the consideration of several matters outlined below.

Scope of Guidance Statement

The Guidance Statement proposes dewatering discharge is to be regulated by DoW under the *Rights in Water and Irrigation Act 1914* (RIWI Act), except in circumstances where it has been potentially contaminated, used in mining or industrial processes, may impact downstream environments or where the proponent intends to reinject mine dewater back to the aquifer.

CME is concerned the exclusions outlined in the Guidance Statement are too restrictive and will see very few mining operations being eligible for the deregulation of mine dewatering. For example, in regions such as the Pilbara dewatering discharge could have impact to downstream environments or may be reinjected back to the aquifer, though the risk to the environment is low and hence the would not be eligible for deregulation

Further, the exclusion of dewater which has been used in mining or industrial processes does not allow for the discharge of dewater which has been treated to meet specific water quality parameters.

CME considers the exclusions listed are not necessary if the proponent is provided an opportunity (for both existing and new licences) to demonstrate whether the risks to public health and the environment is adequately addressed by the regulation of the DoW.

CME recommends the scope of the Guidance Statement is expanded by removing the listed exclusions and the DER allows the proponent to demonstrate whether the risk to public health and the environment is adequately addressed by the regulation of the DoW.

Legislation

The Guidance Statement states “*mine dewatering is a prescribed activity defined within Schedule 1 of the Environmental Protection Regulation 1987 (EP Regulations)*” and applies to Category 6 *Mine dewatering: premises on which water is extracted and discharged into the environment to allow mining of ore.*

However, the Guidance Statement does not include mine dewatering specific to coal mining described under Category 9 *Coal mining: premises on which water is extracted and discharged into the environment to allow coal mining* as a prescribed activity.

CME is aware of coal mining operations where mine dewater is treated prior to discharge and is adequately regulated by DoW under the RIWI Act licence (and supporting Operating Strategy).

CME recommends the Guidance Statement includes *Category 9 Coal mining: premises on which water is extracted and discharged into the environment to allow coal mining* as a prescribed activity.

The Guidance Statement states “*subject to the successful migration of licence holders from regulation by DER under the EP Act, DER will look to remove or modify the prescribed categories in Schedule 1 of the EP Regulations to remove dewatering that meet the criteria under this guidance statement from regulation under the EP Act*”. CME notes the proposed changes administratively remove duplication of regulation, however there is a perception proponents will be in breach of the EP Act if they do not obtain a Part V licence for mine dewatering.

CME’s members take environmental regulatory obligations very seriously and any avoidance of obtaining environment approvals (real or perceived) can impact a company’s reputation and social licence to operate.

As such, **CME recommends DER modify, as a priority, the prescribed categories in Schedule 1 of the EP Regulations to remove dewatering which meets the criteria under this guidance statement from regulation under the EP Act.**

Implementation

When implementing the Guidance Statement, the “*CEO will assess and determine the application for amendment to remove Category 6, having regard to whether the risks to public health and the environment are adequately addressed by the regulation of another competent regulator, the DoW*”. CME is concerned the Guidance Statement does not provide any further detail on how the CEO will determine whether the risks have been “*adequately addressed*” and whether the decision by the CEO, and the rationale for this, will be documented. For example, will the CEO consider the quantity or quality of dewater (or both).

The lack of clarity and transparency of the CEO’s assessment could result in inconsistent decision-making. In accordance with the DER’s Regulatory Principles, the CEO’s process and basis for assessment and decision-making should be equitable, documented and transparent.

CME recommends DER clarifies how the CEO will assess and determine whether the risks to public health and the environment are adequately addressed by the regulation of DoW. All decisions by the CEO are to be documented and transparent.

Roles and Responsibilities Post Approval

While the Guidance Statement aims to remove duplication of regulation, further work is required to clarify the roles and responsibilities of DER and DoW in circumstances, such as during operations where changes to conditions occur and changes to the licence are required. For example, an impact is not expected but arises.


CME considers the roles and responsibilities for regulating dewatering discharge post approvals should be clarified. DER and DoW should ensure consultation with each other as appropriate if changes occur throughout the life of the project. In doing so, the departments should also consult with the proponent prior to a decision being reached.

CME recommends DER work with DoW to clarify their roles and responsibilities of regulating dewatering discharge during operations. DER and DoW should consult with one another and the proponent prior to a decision being made.

Conclusion

CME welcomes the opportunity to review and provide comment on the DER's draft Guidance Statement on Regulation of Mine Dewatering.

If you have any further queries regarding the above matters, please contact Kirrillie Caldwell, Policy Adviser - Environment, on (08) 9220 8507 or k.caldwell@cmewa.com.

Authorised by	Position	Date	Signed
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