

# Submission on the DER Draft Guidance Statement: Environmental Standards

August 2015



## Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate. This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was endorsed by MWAC on **Wednesday 19 August 2015**.

## Introduction

Local Government welcomes the opportunity to comment on the Environmental Standard Guidance Statement. Local Government is commenting on this Guidance Statement in several capacities, as a community representative seeking to ensure the environment is protected, as an operator of prescribed premises to whom the Standards will apply and as a purchaser of products generated by those using the Standards.

## Role and Purpose of Environmental Standards

Local Government provided comment on the Department of Environment Regulation (DER) Draft Guidance Statement: Regulatory Principles. The final version of this document was released during the consultation period on the Guidance Statement for Environmental Standards and is useful in understanding the role and purpose of the Environmental Standards.

The Guidance Statement on Regulatory Principles states that Environmental Standards, Guidelines, and Guidance Statements have the same legislative weight. Environmental Standards are included in the Hierarchy of Regulatory Instruments as 'guidance material' until they are converted to a 'prescribed standard' and then move into the level of subordinate legislation (as included in Figure 1 of the Regulatory Principles Guidance Statement). Although Environmental Standards are listed in that section of the Hierarchy, later in the Regulatory Principles document - Environmental Standards are also included in the section on risk based regulation as a mandatory instrument (Figure 3). The Environmental Standard Guidance Statement states that the Standards will be applied to new applications and existing Licensed Premises. This appears to be somewhat inconsistent and the Association requests clarification on the role and purpose of an Environmental Standard as a regulatory instrument.

***Recommendation: That the Guidance Statement on Environmental Standards clarifies the role and purpose of an Environmental Standard as a regulatory instrument.***

## Assessing all Impacts on Industry

The Guidance Statement on Environmental Standards should contain a commitment that an assessment of the costs and benefits of the proposed approach will be undertaken in the development of any Environmental Standard. Making this assessment public will allow the industry to understand the rationale for the Department's approach and give confidence that the full impact of new regulation is understood. This is particularly important, given the stated linkage between Environmental Standards and license conditions. There is also a need for the Department to ensure that any new requirements on industry are practical to implement.

***Recommendation: That the Guidance Statement on Environmental Standards includes a commitment that all impacts on industry will be assessed by the Department, and made publically available.***

## Support for Change

As the Association has highlighted, diverting waste from landfill to beneficial uses (composting, recycled etc) can be a marginal activity. Where new, and higher, standards of performance are required the industry may need support. An example of such an approach was the Waste Authority support for the implementation of the Asbestos Guidelines to Construction & Demolition waste facilities.

***Recommendation: That the Environmental Standard includes a commitment by DER to support industry in transitioning to the increased regulatory standard.***

## **Consistent Standards and Approach to Consultation**

The DER is currently consulting on both End of Waste Guidelines and Environmental Standards. From discussions with the Department it has been clarified that the Guidelines will be transitioned to Environmental Standards as this is the new approach being used by the Department.

The Association has concerns about the time schedule for the consultation on the Environmental Standard and other documents that have been released. While the Environmental Standard Guidance Statement was still subject to consultation, 2 Environmental Standards were also released for consultation (one with a deadline of 3 August, and the other a 21 August deadline – which was subsequently extended). The two Environmental Standards also have different structures and approaches.

Without the final Guidance Statement on Environmental Standards being agreed, there appears to be some difference between the approach outlined in the Guidance Statement and that of actual draft Environmental Standards. The Guidance Statement on Environmental Standards states that "*existing licences will be reviewed against the Environmental Standards. Environmental Standards will be used to inform decisions on changes to existing licences to achieve acceptable environmental outcomes.*" However, the Background Paper on the Environmental Standard for Composting states that "*the Environmental Standard for composting will be applied to both new applications and existing licences*". The use of the term 'reviewing' implies a more considered approach, where discussion and consultation would occur. The term 'applied' seems to indicate a more directive approach. There is a risk that this disparity will undermine the Department's commitment that "*consistent processes will guide DER's regulatory functions*" (Guidance Statement – Regulatory Principles).

Given the potential for Environmental Standards to be applied through linkages with license conditions to the numerous industries governed by Division 3, Part V of the *Environmental Protection Act 1986*, there is a need for a standardised approach to how Environmental Standards are developed and structured.

In relation to how Standards are developed, there needs to be a consultative approach. The recent meeting with DER and other Stakeholders to discuss the Regulatory Reform process was a good start to a more comprehensive and active engagement approach. As was mentioned in the Association's Submission on the Regulatory Principles, a commitment is required from the Department that a genuine and planned stakeholder engagement process will be used in the development of Environmental Standards. This may mean that the Department will require additional staff to ensure this engagement can occur.

The importance of the Department interacting with other Government Departments has also been highlighted during the current consultation process. It is vital that the Department engage with all other Departments in developing the Environmental Standards to ensure there consistency in the regulatory approach.

***Recommendation: DER develops a Consultation Policy, which outlines how the Department intends to actively engage with Stakeholders – within and outside of Government.***

***Recommendation: DER actively engages with other Government Departments in the development of Environmental Standards.***

The absence of a standard structure / approach will be problematic for those prescribed premises that operate across multiple license categories (for example, a waste management facility may include a putrescible landfill, as well as areas for treating greenwaste, scrap metal, liquid waste and composting). Operators that work across the numerous categories of Schedule 1 of the *Environmental Protection Regulations 1987* could potentially be required to meet conditions that are then underpinned by multiple Environmental Standards with different approaches and structures. The Association considers that every Environmental Standard should clearly identify the scope it covers and have a review period identified.

***Recommendation: That the Department develops Environmental Standards with similar structures and approaches. Particularly with respect to how Environmental Standards will be used to review the licenses of existing facilities.***

## **Status of Draft Environmental Standards**

Clarification is needed on what the Status of a Draft Environmental Standard is. For example whether the Department would use a Draft Standard to assess a new application, or whether usual practice would be followed. The Associations preference is that Standards are not used as reference points until they have undergone the full consultation and endorsement process. The use of Draft Environmental Standards, as de facto Standards, does not promote industry confidence in the consultation process.

***Recommendation: That the Guidance Statement on Environmental Standards identifies at what point an Environmental Standard will be used to guide the Departments processes.***