

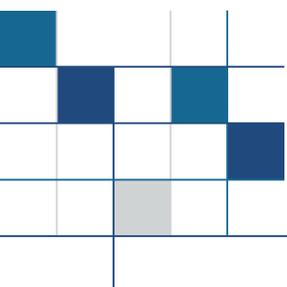


Guideline

Regulating container deposit scheme sites under the *Environmental Protection Act 1986*

Guidance for operators in the Containers for Change scheme in Western Australia

January 2021



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January 2021

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1. Purpose

This guideline provides guidance on how the requirements of the *Environmental Protection Act 1986* (EP Act), and other key legislation the Department of Water and Environmental Regulation (the department) administers, apply to sites participating in the Containers for Change container deposit scheme (CDS) which started operating in Western Australia from 1 October 2020.

This document supports the department's regulatory principles of transparent and consistent decision-making processes.

Sites that require an approval under Part V of the EP Act should follow this guidance when submitting their works approval or licence application to enable timely assessment of their applications.

2. Scope

This document is relevant to business operators setting up for participation in CDS activities.

The department supports Western Australia's community, economy and environment by managing and regulating the state's environment and water resources. The department administers legislation in its regulatory role and this guidance specifically considers the following legislation for CDS operators:

- Part V of the *Environmental Protection Act 1986* (EP Act)
- Environmental Protection Regulations 1987 (EP Regulations)
- Environmental Protection (Controlled Waste) Regulations 2004 (CW Regulations).

Guidelines provide direction on how the department interprets and applies the legislation it administers.

Department guidelines are not mandatory considerations; rather, their purpose is to assist applicants to provide information in the best possible manner to ensure efficient and effective assessment of their application.

Applications that do not align with the appropriate guidelines may result in protracted assessment timeframes and, if the information provided is not sufficient for the department to complete an assessment, the application may be declined or refused.

3. Context

Containers for Change has been established under Part 5A of the *Waste Avoidance and Resource Recovery Act 2007* and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019. The scheme commenced on 1 October 2020.



The scheme provides a 10-cent refund for each eligible container returned for recycling at an approved refund point.

The scheme is being run by WA Return Recycle Renew Ltd (WARRRL) – a not-for-profit company responsible for managing the scheme’s operation under government oversight.

WARRRL is responsible for establishing a collection, logistics and processing network to receive returned containers, to sort containers into material types and process the material in preparation for recycling.

This guideline comes into effect on the day it is published.

This guideline is to be read in conjunction with the department’s [Guideline: Industry Regulation Guide to Licensing](#) (DWER, 2019) and [Procedure: Prescribed premises works approvals and licences](#) (DWER, 2019), which describe the licensing process.

4. Legislation

4.1 Part V of the EP Act

Under Part V Division 3 of the EP Act, the department is responsible for granting works approvals, licences, or registrations for prescribed premises. A premises is prescribed under Schedule 1 of the EP Regulations where:

- the activities on the premises meet the definition provided for one or more categories
- the threshold of production or design capacity for an activity on that premises is met or exceeded.

CDS materials are waste under the EP Act and so CDS operators need to consider how the EP Regulations apply to their site. The EP Act makes it an offence to cause an emission or discharge that meets the Schedule 1 production or design capacity unless a licence is held for the premises.

Under section 53 of the EP Act, if an emission from a prescribed premises is caused or increased, or the nature of waste or emissions changed, the occupier commits an offence unless they are the holder of a licence or works approval and the emission is in accordance with any conditions to which the licence or works approval is subject.

This means an occupier of any prescribed premises must have either a works approval or a licence to authorise emissions or discharges to occur, and must comply with the conditions of that works approval or licence (section 53 and section 56).

Under section 53 and section 56 of the EP Act, where a premises is already a prescribed premises for a non-CDS activity, the addition of CDS activities, including refund points, aggregation points, and processing capacity, may be regarded as a change to a prescribed premises and may require a works approval or licence amendment application to be made before commencement of CDS activities.



The activities carried out during CDS operations are covered by a number of prescribed activities, depending on the nature of the CDS site as summarised in Table 1 below.

Table 1: Summary of prescribed activities and categories that may apply to CDS operations

| Category and description (Schedule 1 of the EP Regulations) | Production or design category | Type of CDS operation | Typical CDS activities |
|---|-------------------------------|--|---|
| 61A – <i>solid waste facility: premises (other than premises within category 67A) on which solid waste produced on other premises is stored, reprocessed, treated, or discharged onto land.</i> | 1,000 tonnes or more per year | Processing facility | Processing such as shredding or fragmenting plastic or cardboard, crushing glass and associated storage of CDS materials |
| 62 – <i>solid waste depot: premises on which waste is stored or sorted, pending final disposal or re-use, other than in the course of operating –</i> (a) <i>A refund point (as defined in the Waste Avoidance and Resource Recovery Act 2007 section 47C(1)) (a refund point); or</i> (b) <i>A facility or other place (an aggregation point) for the aggregation of containers that have been returned to refund points until those containers are accepted for processing or disposal.</i> | 500 tonnes or more per year | Refund point Aggregation point Processing facility | Receiving containers Separating containers by material type and storing CDS materials Baling or cubing plastic, cardboard |

The Environmental Protection Amendment Regulations 2020 were enacted on 14 August 2020 to amend the description of category 62 to exclude standalone CDS refund points and aggregation points from being a prescribed premises and requiring a licence.

4.2 Controlled Waste Regulations

The CW Regulations control the transportation of controlled waste on roads in Western Australia. The CW Regulations provide for the licensing of carriers, drivers, and vehicles involved in transporting controlled waste on roads in Western Australia.

5. Guidance

The following sections detail the scope of any licensing requirements under Part V of the EP Act for refund and aggregate points and processing sites. Example scenarios are provided in Appendix A. The process for adding CDS activities to a prescribed



premises is summarised in Appendix B. Guidance on residual liquids within CDS containers is also provided in section 6.5 below.

6.1 Refund/aggregate points not on prescribed premises

This section applies to refund points and aggregation points at CDS premises that:

1. are registered with WARRRL as a refund point/aggregation point operator
2. are not currently prescribed premises
3. will only be used for refund point and aggregation points and not for any other activity that meets the definition of a prescribed premises.

The licensing provisions in Part V of the EP Act do not apply to CDS refund and aggregation point operators meeting the above circumstances. No applications or approvals under Part V of the EP Act are required in this case. Note that the operator of the CDS activities is bound by the general provisions of the EP Act and related subsidiary regulations.

6.2 Processing operations not on prescribed premises

This section applies to CDS processing facilities (as registered with WARRRL) that are not on a premises that is currently prescribed under Schedule 1 of the EP Regulations.

The department will consider whether the licensing provisions in Part V of the EP Act apply on a case-by-case basis. The need for licensing will depend on the scale of processing that is taking place at the facility and nature of the proposed processing.

The CDS operator should refer to Table 1 of this document, Schedule 1 of the EP Regulations, and the *Guideline: Industry Regulation Guide to Licensing* to identify whether the CDS activities are likely to meet the description of a prescribed premises. The department can assist in this scoping process for CDS operators. Requests for scoping meetings can be made by emailing info@dwer.wa.gov.au.

Where the licensing provisions in Part V of the EP Act apply, the applicant should follow the process set out in the *Procedure: Prescribed premises works approvals and licences* to apply for a works approval and licence.

6.3 Adding CDS activities to a prescribed premises

Where a licence holder wishes to add CDS activities to an existing prescribed premises that holds a licence granted under Part V of the EP Act, changes to the premises can be authorised through the submission of a works approval or a licence amendment.

Guidance on when any proposed works and additional activities need to be authorised through a works approval or licence is contained in the *Guideline: Industry Regulation Guide to Licensing*.



In general, a works approval application will be required where:

- there are additional works or emissions not previously assessed
- there are changes to containment structures not previously assessed, or
- the scale of the works and the impact of the proposed change is considerable.

A licence amendment may be appropriate if the addition of the CDS activities does not require construction works to be undertaken or does not significantly alter the licensed activities, total throughputs, or waste acceptance of an existing prescribed premises.

Applications to add CDS activities should, in addition to the standard information required by the application form:

- include a site map clearly identifying areas and infrastructure/equipment used in CDS activities and non-CDS activities
- identify and provide detail on wastes being accepted and handled by CDS activities and any changes to the total waste throughput of the premises
- identify and provide detail on wastes being accepted and handled through CDS activities including any changes to the waste streams being accepted at the premises
- identify and detail changes to the nature or risk of emissions from the whole premises, that may result from the new CDS activities. In particular, changes to fire management planning at the premises given the storage of any flammable CDS materials.

General guidance for preparing a licence amendment application can be found in the *Guideline: Industry Regulation Guide to Licensing and Procedure: Prescribed premises works approvals and licences*.

As CDS refund points and amalgamation points do not require licensing under Part V of the EP Act under some circumstances (see section 6.1) a CDS operator may seek to amend their licence to excise the CDS activities from the prescribed premises boundary. They may only do this if the CDS activities are undertaken in a discrete area of the premises, and where the activities undertaken in that area do not meet the definition of any prescribed premises.

The CDS operator should refer to Table 1 (in section 1 above) and Figure 1 of this document, Schedule 1 of the EP Regulations, and the *Guideline: Industry Regulation Guide to Licensing* to identify whether the CDS activities are likely to meet the description of a prescribed premises. Where the proposed CDS activities do not meet the definition of prescribed premises, the licence holder may submit a licence amendment application excising the area of the proposed CDS activities from the prescribed premises boundary.

In addition to the standard information required by the application form, applications should be accompanied by:



- a site map clearly identifying areas and infrastructure/equipment used in CDS activities and non-CDS activities
- a description of the CDS activities to be undertaken in the area being excised.

6.4 Registrations

This section applies to CDS refund points, aggregation points or processing facilities that are being added to a prescribed premises operating under a registration.

Whether any further approvals under Part V of the EP Act are required will depend on the scope and scale of CDS activities. As detailed in the *Industry Regulation Guide to Licensing*, any construction works required to add CDS activities to registered premises may require a works approval. The addition of CDS activities may, in some circumstances, also cause the premises to require licensing under Part V of the EP Act.

The department will therefore consider whether further approvals under Part V of the EP Act are required on a case-by-case basis. The registration holder should submit correspondence to the department through info@dwer.wa.gov.au to notify them of the proposed CDS activities at their registered prescribed premises. The correspondence should include the type and volumes of CDS waste to be handled at the site.

6.5 Residual liquids in containers

In accordance with regulation 4C(5)(b) of the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019 refund operators must refuse to accept a container if the container is not empty.

Should containers with residual liquids be inadvertently received at refund points, the CW Regulations may apply to the waste produced if it is transported off site.

In addition, any wastewater discharged to sewer from CDS activities will generally be classified as trade waste.

Operators should refer to Water Corporation's website for information on trade waste permits or contact Water Corporation for further advice and guidance on discharges to sewer.



6. Further information

For further information on regulation under Part V of the EP Act, please contact the department's Industry Regulation division on 6364 7000 or email info@dwer.wa.gov.au

Additional publications about industry regulation are available online at dwer.wa.gov.au/regulatory-documents or can be requested by phone on the above number.

For further information on the Controlled Waste Regulations, please contact the department's Controlled Waste team on 6364 6546 or email controlled.waste@dwer.wa.gov.au.

For further information on trade waste discharges, please contact Water Corporation Trade Waste on 13 13 95 or email tradewaste@watercorporation.com.au.



Document implementation

The department will publish this guidance on its website and will notify registered CDS operators at the time of publication.

The Industry Regulation division is responsible for implementing this guideline.

This guideline comes into effect on the day it is published. Applications received after publication will be assessed in accordance with the information contained herein.

The guideline will not generally be used retrospectively, outside the department's normal licensing processes, to reassess existing facilities. However, in situations where there is evidence of unacceptable emissions or unacceptable risk of emissions, the department may initiate a review of the licence, informed by this guideline, and new controls may be applied through licence conditions.

Related documents

| Non-department documents | |
|--------------------------|---|
| Author | Title |
| Parliament of WA | <i>Environmental Protection Act 1986</i> |
| Parliament of WA | Environmental Protection Amendment Regulations 2020 |
| Parliament of WA | Environmental Protection Regulations 1987 |
| Parliament of WA | Environmental Protection (Controlled Waste Regulations) 2004 |
| Parliament of WA | <i>Waste Avoidance and Resource Recovery Act 2007</i> |
| Parliament of WA | Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019 |

| Department documents | |
|--|--|
| Author | Title |
| Department of Water and Environmental Regulation | <i>Application form: licences, works approvals, etc.</i> der.wa.gov.au/our-work/licences-and-works-approvals/applications |
| Department of Water and Environmental Regulation | <i>Guideline: Decision Making</i> (June 2019) dwer.wa.gov.au/regulatory-documents |
| Department of Water and Environmental Regulation | <i>Guideline: Industry Regulation Guide to Licensing</i> (June 2019) der.wa.gov.au/our-work/licences-and-works-approvals/540-guideline-industry-regulation-guide-to-licensing |
| Department of Water and Environmental Regulation | <i>Procedure: Prescribed premises works approvals and licences</i> (Oct 2019) dwer.wa.gov.au/procedure/prescribed-premises-work-approvals-licences |



| | |
|-------------------|--|
| Water Corporation | <i>Trade waste permits</i> watercorporation.com.au/Help-and-advice/Trade-waste/Permits-and-charges/Trade-waste-permits |
|-------------------|--|



Custodian and review

The currency of this document will be continuously evaluated, and reviewed no later than three years from the date of issue or sooner as required.

| Document details | |
|-------------------------|--|
| Lead group (custodian) | Industry Regulation, Regulatory Services |
| Current version | v1.0 FINAL, September 2020 |
| Corporate file number | DWERVT6495 |



Appendices

Appendix A: Example scenarios for regulation under Part V of the EP Act

Addition of CDS activities to an existing prescribed premises

Example 1

The licence holder of a solid waste facility (licensed under category 61A) intends to build a new hardstand and a shed for a CDS refund point at the prescribed premises. The licence holder wishes to include the CDS activities onto their licence to have a defence for emissions and discharges from the CDS activities. A works approval is required for the construction and installation activities, and then a licence amendment to add the CDS activities at the prescribed premises.

Example 2

The licence holder of a solid waste depot (licensed under category 62) intends to operate as a refund and aggregate point for CDS materials in a portion of their existing industrial shed that is currently unused. The CDS activities would not meet the definition of a prescribed premises if undertaken as a standalone activity. The licence holder does not wish to have a defence for emissions and discharges from the CDS activities and therefore does not require the CDS activities to be incorporated into the prescribed premises. A licence amendment is required to excise the area of land on which the CDS activities will be undertaken from the prescribed premises boundary/licence.

Example 3

The licence holder of an inert landfill (licensed under category 63) intends to build a new hardstand, drainage and a shed and install a crusher to begin receiving and processing CDS materials, including crushing glass and baling cardboard. The licence holder should submit a works approval application for the construction and installation works, followed by a licence amendment application to add category 61A for the CDS acceptance and processing activities at the prescribed premises.

Example 4

The licence holder of a materials recovery facility (licensed under category 62) intends to receive metal cans from CDS sources, using current facilities and equipment. The throughput of waste received at the prescribed premises will stay within the currently licenced throughput with no changes to operating hours or other processes likely to change the emission for their premises. A licence amendment only is required to recognise the CDS waste acceptance and activities at the prescribed premises if this waste type is not already an approved waste under the existing licence.



New premises

Example 1

A company is a refund and aggregate point operator under the CDS. The site they wish to use for the CDS activities is not a prescribed premises. The proposed CDS activities do not meet the definition of a prescribed premises because they are excluded by the recent amendment to the EP Regulations. No approvals under Part V of the EP Act are required.

Example 2

A company is a refund and aggregate point operator under the CDS. They wish to undertake the CDS activities on a site where they also wish to undertake the receipt and processing of other waste streams in excess of prescribed premises thresholds for category 61A (solid waste facility). The company wishes to have a defence for all emissions and discharges from the premises, including any from the CDS activities. The company must apply for a works approval to construct the infrastructure for both CDS and category 61A and secure a licence to operate/undertake all activities on the premises.



Appendix B: Process for adding CDS activities to an existing prescribed premises

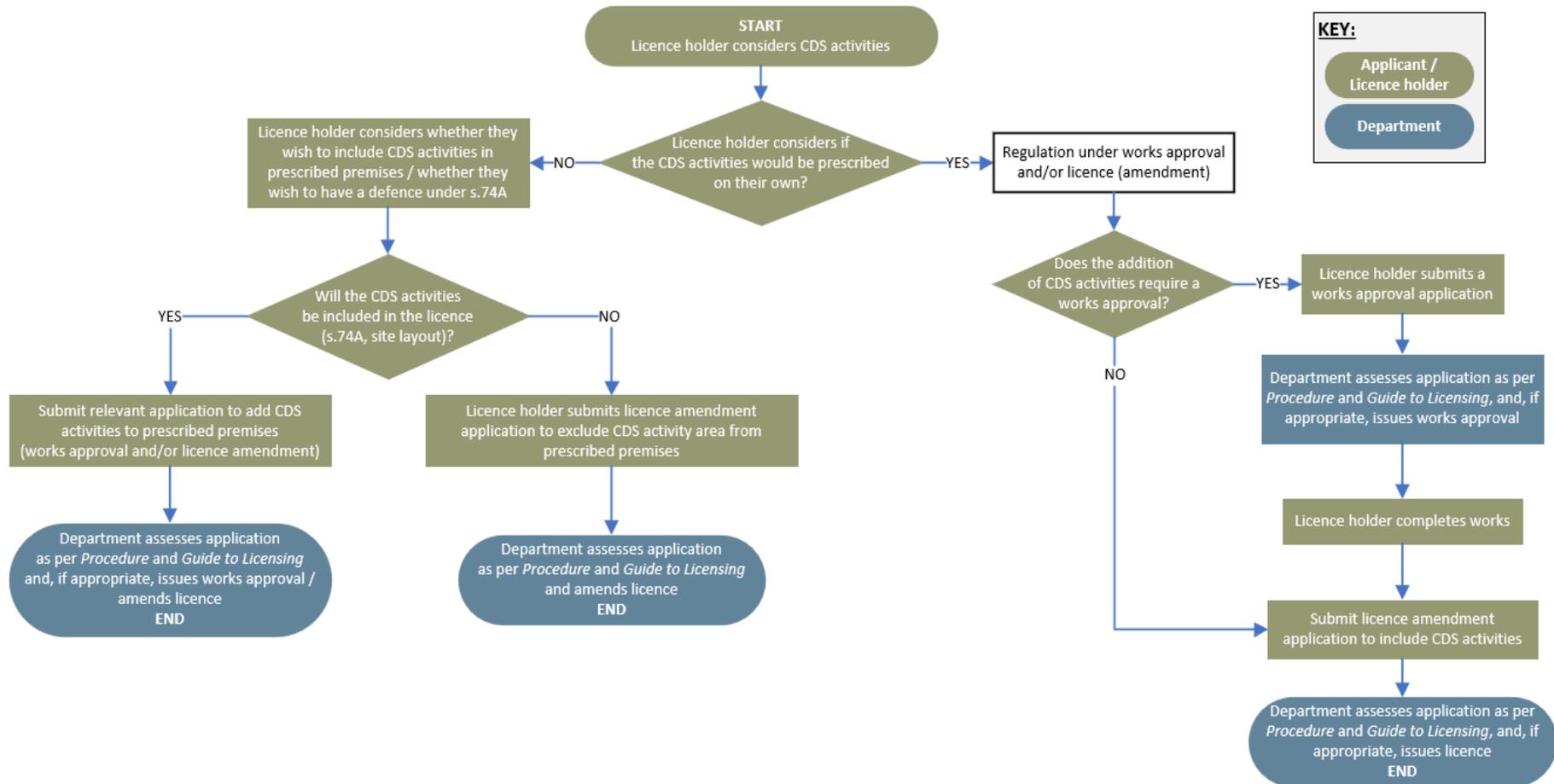


Figure 1: Adding CDS activities to a prescribed premises



Glossary

| Term | Definition |
|------------------------------|--|
| aggregation point | a facility or other place for the aggregation of containers that have been returned to refund points until those containers are accepted for processing or disposal. |
| category | category of prescribed activity as given in Schedule 1 of the <i>Environmental Protection Regulations 1987</i> |
| CDS | container deposit scheme, the Containers for Change program to begin in Western Australia on 1 October 2020 |
| CW Regulations | Environmental Protection (Controlled Waste) Regulations 2004 |
| department | Department of Water and Environmental Regulation |
| EP Act | <i>Environmental Protection Act 1986</i> |
| EP Regulations | Environmental Protection Regulations 1987 |
| processor | a facility registered as such by WARRRL |
| refund point | has the meaning as defined in the <i>Waste Avoidance and Resource Recovery Act 2007</i> , section 47C(1) |
| refund point operator | has the meaning given to that term in Part 5A of the <i>Waste Avoidance and Resource Recovery Act 2007</i> |
| refund point premises | means premises that are occupied or used by a refund point operator for the purpose of carrying out the refund point operator's functions under Part 5A of the <i>Waste Avoidance and Resource Recovery Act 2007</i> |
| WARRRL | Western Australian Return Recycle Renew Ltd, the appointed scheme co-ordinator responsible for establishing and maintaining Western Australia's container deposit scheme |