

Mid West Ports Authority Submission

Environmental Protection Act 1986 amendments consultation

Department of Water and Environmental Regulation *Modernizing the Environmental Protection Act Discussion Paper, October 2019*

Section 2.7 Part V Environmental Regulation

Move from premises-based to activity-based licensing

The complexities of tenure and use arrangements for ports established under the *Ports Authority Act 1999* may mean activities within the boundaries of a port will need to be dealt with by the Department on a case-by-case basis. Mid West Ports Authority (MWPA) would be seeking assurance that activities licences within the Port Precinct or indeed on MWPA owned land would result in MWPA being directly consulted by DWER and given opportunity to provide input to licence conditions.

MWPA agrees there could be benefits for entities that have exclusive access to berths, through ownership of infrastructure and or via lease agreement, to hold a licence for their activities. Benefits such as greater flexibility and control to amend the licence to meet business needs, direct responsibility for compliance and reporting against the licence and greater transparency for the regulator around control measures could be achieved.

This approach within a Port with multiple users and activity owners could create uncertainty around what activities are prescribed and who owns the activity. The result could be multiple overlapping licences, duplication in monitoring and reporting activities and increased burden to the licensing agency.

For example:

On a multi-user berth, designated for mineral and metal concentrates, as many as four different entities may be involved in the storage, handling and loading of the product:

- A Mineral Exporter may have an Agreement with the Port Authority to lease land on which it constructs a storage shed, inbound receival facilities for truck or trains and or ship loading facilities for the export of product. However, some exporters will have no formal arrangement with the Port Authority where their product storage is located outside the port or on privately owned land and or their loading operation is managed by 3rd parties such as the ones detailed below.
- A Mineral exporter will typically contract a 3rd party truck and or rail company to cart products into the port and deliver it onto the storage facility, onto the berth and or the bulk handling facility on behalf of a proponent. The method of delivery of the product to the port often has a significant impact on emissions.
- Stevedores will hold a Port Authority issued Licence allowing them to provide loading or unloading service to ship bulk granular products, using either MWPA owned, mineral exporter owned or self-owned loading infrastructure. More often than not, it is the loading rate set by the stevedores that has the greatest impact on emissions.
- The buyer who becomes the legal owner of the product once it passes the ships rails upon loading.

Currently MWPA holds a Part V Licence that allows all four entities to undertake the activities associated with receival, storage and loading and unloading of bulk granular materials within a Prescribe Premises boundary. The licence is also the mechanism by which DWER approves the material

storage and handling methodology. MWPA therefore is responsible for the control, monitoring and reporting of emissions and discharges.

Currently the port has several users exporting the same product. For example, there are three exporters of copper concentrate, three exporters of mineral sands, two exporters of iron ore and two exporters of zinc concentrate. New mine development could see the number of exporters of each product grow. Under the existing Part V Licence, one licence can be used to cover multiple exporters of the same product. A shift to activity based licensing could require multiple licences for the same product.

Under an activity-based licensing strategy it is therefore unclear:

- if each of the entities would be required to hold a separate environmental licence;
- which entity would be responsible for monitoring and reporting emissions; and
- what, if any role, the Port Authority retains for ensuring products are handled correctly?

Capacity and Throughput

As Schedule 1 of the EP Regulations have yet to be amended, to prescribe both an activity and a threshold level for licensing, it is difficult for the Port Authority to determine how the following Prescribe Premises Categories will be modified under the proposed amendments:

- Cat 58. Bulk Material loading or unloading: premises on which clinker, coal, ore, ore concentrate or any other bulk granular material (other than salt) is loaded onto or unloaded from vessels by an open material loading system.
- Cat 58A. Bulk Material loading or unloading: premises on which salt is loaded onto or unloaded from vessels by an open material loading system.

The current licensing strategy for MWPA is to issue a licence for several different product types and regulate volumes based on the '*Design Capacity*' of all berths within the Port regardless of ownership or use. The annual and daily throughput limits are therefore contributed to by all Port Users handling licensed products and not specific to a certain company or product type. This provides MWPA with wide ranging powers to monitor and manage the many different parties involved in the loading process, from the moment product arrives in the port, to the point at which it departs.

Should the proposed changes to legislation result in individual Port Users being issued separate licences it is unclear if or how cumulative throughput would be defined for the Port Authority. It should also be noted that shiploading activities only contribute to part of the total emissions within a port, with the product being handled two or three times before it is loaded on a vessel, so a throughput based.

It should be noted that some mineral exporters ship multiple products, through multiple berths using a variety of different loading methods. In some cases, they also ship through multiple Western Australian ports. The individual licensing of all these activities would create a significant administrative burden for both the exporter and DWER.

The Queensland Government operates under a similar activity-based licensing scheme as that proposed by DWER. As a result of this approach the Port of Townsville struggles to achieve its designed throughput capacity, as the individual licence holders apply for the maximum capacity volumes possible. The Department's assessment of the capacity assumes that the activity being

licensed is, or will be, undertaken 24-hours a day, 365 days a year at the maximum throughput allowable under the licence. This has resulted in companies successfully gaining a competitive advantage over their competition. Companies who wish to use the Port cannot gain a licence as there is no available throughput capacity, “on paper”, to facilitate this trade even though in practice the port users are never reaching the design capacity stated in the licences.

Under this licensing scheme the Port of Townsville has taken on the role of a pseudo regulator monitoring and modelling air quality within the shared Air-shed of the port. The Port of Townsville however, has no direct involvement in licensing or influence over the development of control measures which creates challenges for the Port in achieving its growth and development plans.

One of the key outcomes of *The Exposure draft Bill* is to provide significantly more flexibility and certainty in the regulation of activities and emissions that pose a risk to the environment. The current WA licensing approach outlined in the *DWER Guideline Industry Regulation Guide to Licensing, June 2019* assumes higher production or design capacity equates to higher levels of emissions and generally assumes that the activity is, or will be, undertaken 24-hours a day, 365 days a year at the capacity allowed for in the licence. This is not the case and at Geraldton, most port users only have 2 – 4 vessels a month. As a result, MWPA’s multi user berths typically only have a 40 - 50% utilization, meaning they are only occupied for ~180 days a year. The actual throughput of 15 million tonnes per annum is well below the port’s theoretical capacity of 30 – 40 million tonnes per annum.

A clear transition plan would need to be agreed upon between the Department, MWPA and its Port Users to ensure equity of access is maintained and roles and responsibilities are clearly understood. In particular, a user-based system would disadvantage new mining project who may be unable to secure access due to capacity granted to existing projects. There is a real risk that an activity-based licensing strategy if not well implemented in Ports, could result in uncertainty for new mining project developers and investors, a reduction in the diversity of products and limited growth in trade and economic benefit for the state.