

Submission on the DER Draft Guidance Statement: Separation Distances

October 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.

Due to meeting schedules, this Submission has not yet been endorsed by MWAC, however it will be considered at the earliest opportunity (Wednesday, 16 December). The Department will be informed of any changes to this Submission following consideration by MWAC.

Executive Summary

The Association welcomes the opportunity to comment on the Guidance Statement: Separation Distances (the Guidance Statement). Local Government supports the intention of separation distances – to address issues with incompatible land uses at the planning stage, rather than when a facility is operating. However separation distances should not be used instead of a facility operating to minimise offsite impacts or in place of active regulation to ensure that licence conditions are being met.

This Submission provides feedback on the use of separation distances by decision making authorities and briefly discusses the DER Guidance Statement on Land use planning.

Feedback from Local Government, has highlighted the need for separation distances that have a demonstrated evidence base. For some categories of prescribed premises there has been a substantial increase to the separation distances, from the advice provided in the *EPA Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses No. 3 (2005)*. Without evidence to support the increases the credibility of the separation distances will be questioned.

Recommendations are provided on separation distances for landfills, incinerators and composting facilities. Broadly, the Association recommends that unless there is a demonstrated need for an increase to the distance, the separation distances of the 2005 EPA Guidance be used.

1. Introduction

Local Government is commenting on the Guidance Statement in a number of capacities, as a community representative seeking to ensure the environment is protected, as a decision making authority, and as an operator of prescribed premises to whom the Guidance Statement will apply.

Local Government undertakes a range of activities and may operate any number of prescribed premises, including:

- Sewage facilities
- Liquid waste facilities
- Livestock saleyards or holding pens
- Used tyre storage facilities
- Solid waste facilities
- Solid waste depots
- Landfills
- Compost manufacturing and soil blending facilities
- Facilities where building material is crushed

In developing this Submission, the Association has provided specific comments on the separation distances proposed for facilities operated by Local Government. Additional comment has been made on Local Governments use of both the DER and EPA's guidance on separation distances for planning purposes. It is important that the guidance reflects current industry practice, or there could be an increase in the number of Local Government decisions taken to the State Administrative Tribunal (further comment is included in section 2.1 of this Submission). It is difficult for the Association to comment on Local Governments role in responding to public health and amenity concerns for prescribed premises as there may be a range of location specific issues. The Association considers that DER, as a regulator, is best placed to address these type of concerns through its licencing and regulatory activities.

The Association notes that several of the documents referred to in the Guidance Statement are yet to be released. Once all of the documents have been released the Association will be assessing how the various Guidance Statements and Environmental Standards interrelate.

2. Context

Local Government supports the intent of the Department to provide guidance on separation distances, for approvals granted under Part V of the *Environmental Protection Act 1986*, as distinct from how the EPA will use separation distances under Part IV of the Act.

This section of the Submission provides context on how decision making authorities are likely to use the Guidance Statement, the way that environmental and planning approval processes interact, as well as some projects that are underway to address conflict between sensitive receptors and industrial facilities.

2.1 Decision Making Authority's use of Separation Distances

The Department has indicated that it has taken a conservative approach in setting the draft separation distances. In taking this approach, the Department must consider how these distances are likely to be used by decision makers such as Local Government. The DER is viewed by other decision makers as the most appropriate authority to determine scientifically valid separation distances for prescribed premises as it issues licences for these facilities and should have an understanding of the way industry operates. Therefore, it is likely that planning decisions may be influenced by the distances outlined in both the DER Guidance Statement and the Draft *EPA Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses (2015)*. It is possible that an application could be refused if it does not meet a separation distance, as planning decisions may not fully consider the type of technical and process controls that

will be used on site. To assist the Local Government decision making process, it is suggested that the separation distances be based on the expectation that the facility will adopt reasonable and practical measures to avoid emissions (this is explored in Section 4.1 of this Submission). The recently released DER Guidance Statement: Land use planning indicates that “*DER has a role in providing advice to the land use planning system*” and will provide advice on request to “*State and Local Government planning authorities*”. The Association welcomes the release of the Land use planning Guidance Statement and the DER’s commitment to providing advice. How this operates in practice will require further clarification.

Conversely, another practical issue which has been highlighted throughout the consultation process is that the DER and EPA advice on separation distances provides no guarantee that other development approvals will not be granted for activities in a particular area. Established prescribed premises could be affected if a ‘sensitive receptor’ seeks to develop within the prescribed separation distance. This can result in legal issues for Local Government - for example the conflict between the Linley Valley Abattoir and the El Caballo Resort over a decision by the Shire of Northam to approve the development of a LifeStyle Village next to the Abattoir¹.

Some operators of prescribed premises have attempted to avoid these issues by purchasing the land that surrounds their facility. This gives operators control over the activities that can occur on that land. However, this is not always possible (physically or financially). For those operators that have purchased land to guarantee their separation distance based on the current requirements, any increase to these distances could put the operation of the facility at risk.

2.2 Order of Approvals

Feedback from Local Government has highlighted there is considerable confusion on how planning approvals are granted for certain facilities. For example, operators of prescribed premises are required to obtain both Local Government planning approval and a DER licence. There have been situations where Local Government in its capacity as a decision maker, has been hesitant to grant planning approval when it is unknown if DER will grant a works approval / license for a particular site or operator. Local Government may not have sufficient expertise to assess a technical application. The recently finalized DER Guidance Statement: Land use planning makes clear the DER’s approach and process on this issue and the Association will be communicating this to the sector.

2.3 Consistent Policy Framework

In order to provide a consistent policy framework on separation distances, it is imperative that the context in which the Guidance Statement will operate is fully understood.

The State Government has identified that Perth is on its way to becoming a city of 3.5 million people and that planning decisions need to be made in that context. With greater population density there will be more focus on ensuring that infrastructure is correctly sited and operated to maximise efficiencies and minimise any impact on the community and the environment.

The Strategic Waste Infrastructure Planning Project (SWIPP) aimed to determine what waste management infrastructure is required to meet the needs of the Perth and Peel as a ‘3.5 million city’ and to assist in meeting the targets of the Waste Strategy. The Association is of the understanding that potentially suitable industrial zoned land for different types of waste management infrastructure (that includes protected buffers) will be identified as part of this project. Although the results of this project are yet to be released, there is a risk that the methodology used to establish these land requirements will be affected if the DER increases separation distances.

The Minister has advised the Association that the SWIPP will inform the Strategic Assessment of the Perth and Peel Regions. This project is the largest urban-based strategic assessment undertaken to date in Australia. If the information on separation distances that has been incorporated into this

¹ Supreme Court of WA KELVEDON PTY LTD -v- THE SHIRE OF NORTHAM [2011] WASC 288. Available online. <http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf/judgment.xsp?documentId=E047DFF35955F35B48257930000D6CED&action=openDocument>

process is wrong or radically changes, there will be significant ramifications for future development.

The Department of Planning is currently updating a number of State Planning Policies that also relate to separation distances. Most recently, this has been the *State Planning Policy 2.5 Land Use Planning in Rural Areas*² and *State Planning Policy 4.1 State Industrial Buffer*³. It is unclear how the advice provided by the Department of Environment Regulation on separation distances interacts, supports or refers to these Policies.

Recommendation: That the DER, EPA and DoP collaborate to communicate the State Governments collective position on separation distances and buffers, in how they interact and will be applied.

3. Comments on Consultation Paper

Local Government is pleased to note that the Department welcomes feedback on distances that are appropriate to the technology and processes currently used.

The Consultation Paper provides limited background on what is proposed in the Guidance Statement – particularly regarding increases to separation distances. The Association considers that the Consultation Paper should be retained as a background paper, but provide far greater detail on the rationale for the approach taken by the Department to separation distances along with more detail on how the Guidance Statement is to be implemented by the DER and other decision makers (particularly Local Government planning officers). Alternatively, this information could be included in the Guidance Statement. Clearly articulating the main drivers for the chosen approach and how the new distances have been determined will assist in reducing Local Government concerns.

Recommendation: That the Department provides further information on the rationale for the approach taken, and how the Guidance Statement is to be implemented by various decision makers.

4. Draft Guidance Statement on Separation Distances

The Association is concerned that many of the documents released as part of the reform process will be read in isolation. If this occurs for this Guidance Statement, stakeholders may not understand the breadth of the reforms underway, and that separation distances are intended to inform a broader assessment of risk. Articulating the linkages between the final Guidance Statement and the documents to which it relates would assist stakeholders. The Draft *EPA Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses (2015)* does this by identifying the context in which the document operates and how it will be applied.

This section of the Submission relates to concerns that have been raised with the Association through the consultation period, and then makes comment on each section of the Guidance Statement.

4.1 Primary Concerns

Scientific / evidence base for distances

The DER Guidance Statement does not present the rationale or evidence used to inform the increase in separation distances from that of the 2005 EPA Guidance⁴. The DER Guidance Statement has, broadly, the same separation distances as those recommended by the EPA in the Draft *EPA*

² Department of Planning (2015). State Planning Policy 2.5 Land Use Planning in Rural Areas. Available online. <http://www.planning.wa.gov.au/State-planning-policies.asp>

³ Department of Planning (2009). State Planning Policy 4.1 State Industrial Buffer. Available online. <http://www.planning.wa.gov.au/State-planning-policies.asp>

⁴ EPA (2005) Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses No. 3.

Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses (2015). However, the EPA Guideline indicates:

“The separation distances are based on scientific information (where available) and knowledge and experience of technical experts and are also drawn from various codes-of-practice, guidance from other jurisdictions, and the EPA’s previous guidance material”.

How the separation distances have been determined needs to be presented in a consistent manner by both EPA and DER, whether it is science, complaints, or experience based. Without this information the credibility of the separation distances will be questioned.

Recommendation: That the Department presents the rationale or evidence used to inform the increase in separation distances.

Reasonable and Practical Measures

Local Government is concerned that the Department’s approach to licencing facilities is based on ‘worse case’ scenarios, rather than the expectation that the industry take all reasonable and practical measures to prevent or minimize emissions and impacts. This impression is reinforced, by the limited emphasis on technical and process controls that can be adopted on site to reduce offsite impacts. The Draft *EPA Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses (2015)* states:

“Operators of an emitting industry must take all reasonable and practicable measure to prevent or minimise emissions from their premises. It is generally expected that, through appropriate site layout, design of facilities, and the implementation of engineering and process controls, emissions from an individual site can be prevented from causing adverse impacts beyond its boundaries...”

The Association considers the expectations that the EPA outlines to be reasonable and in line with how Local Government facilities operate. The DER approach of ‘worse case’ scenarios is not in line with the risk based approach which the Department has highlighted in its reform Agenda.

Recommendation: That the DER bases separation distances on the understanding that industry will take all reasonable and practical measures to prevent or minimize emissions and impacts.

Use of the DER Guidance Statement

To assist users of the Guidance Statement it would be helpful to include additional advice on how the various decision making authorities are to use it. If the document is intended primarily for the Department and operators of prescribed premises only, this too should be made explicit. The Draft EPA Guidance identifies how the EPA will use the Guidance, how the EPA would like planners to use the advice and how the document interacts with the DER advice.

Recommendation: That the Department provides advice on how the Guidance Statement is to be used by various decision makers.

4.2 Guidance Statement

The implications for the Guidance Statement are sometimes difficult to ascertain as many relate to how the Department will assess risk for existing and new licence holders. The Association expects that the *Guidance Statement on the Environmental Risk Assessment Framework* will provide additional clarity.

The Association has some suggestions regarding the specific points made in the Guidance Statement. It is suggested that the points be re-ordered to present the positive outcomes of meeting the separation distances first and then move onto the other consequences.

Further comments and suggestions have been provided on each component of the Guidance Statement.

1. *DER will undertake its risk assessments for works approvals and licensing under Part V of the EP Act in accordance with its Guidance Statement on Environmental Risk Assessment Framework (proposed draft release September/October 2015).*

This document has yet to be released. There are a range of documents that will impact on how separation distances will be applied, these documents do not need to be listed in this part of the Guidance Statement.

Recommendation: Remove Statement 1 and include the range of documents the Guidance Statement relates to in the Background.

2. *DER will require noise modelling and monitoring in accordance with its Guidance Statement on Regulatory Assessment Framework (proposed draft release September/October 2015).*

This document has yet to be released. There are a range of documents that will impact on how separation distances will be applied, these documents do not need to be listed in this part of the Guidance Statement.

In addition, the inclusion of this point seems to imply that all facilities will require noise modeling and monitoring, however noise is not a factor (or a significant factor) for all types of prescribed premises. The requirement for noise modelling and monitoring is more likely to be assessed at the application stage and should be included in the new Application Form and Licence Template.

Recommendation: Remove Statement 2 and include the range of documents the Guidance Statement relates to in the Background.

3. *Modelling of odour, dust or air emissions submitted by applicants will not, in itself, be sufficient to demonstrate a lower risk of the activity to public health or amenity.*

The Association requests clarification on what approaches will meet the Departments requirements for facilities. In the Departments list of upcoming consultation Guidance Statements for air quality, noise, odour, emissions to land and emissions to water are listed. The Association questions whether these documents will provide further detail on what the requirements are. Analysis and modelling is used by many operators to demonstrate to the Department that their facilities will not cause emissions in a variety of scenarios. If the Department is precluding the use of these approaches, guidance on alternative approaches that is vital.

Recommendation: That the Department provides clarification on what approaches will be acceptable.

4. *To inform DER's risk-based approach to its regulatory functions, DER will consider the separation distances for premises from sensitive land uses, as set out in Appendix 1.*

Refer to comments on Appendix 1. The Association understands that the Department will soon be releasing the *Environmental Risk Assessment Framework*, in this document it would be useful to include an outline as to the weighting of separation distances in the Department's decision making process.

5. *DER will apply the methodology for measuring separation distances as set out in Appendix 2.*

Local Government is supportive of this methodology, which is clearly presented and provides the sector with greater clarity on how to measure distances.

6. *Applications for works approvals or licences for premises which do not meet separation distances will be considered as having a higher risk to public health and amenity and will require a more detailed risk assessment. If a works approval or licence is granted for these premises, instruments are likely to contain a higher level of regulatory control, such as management or process conditions.*

Information is requested on the level of detail required for a 'more detailed risk assessment.' Currently, there is no trigger in the Department's Works Approval and Licence Application Form to assist proponents in determining the level of detail required.

Recommendation: That the Department provides information on the level of detail required for those applications that require a more detailed risk assessment.

7. *Existing licensed premises that do not meet separation distances will be considered as having a higher risk to public health and amenity and may require a higher level of regulatory control, including additional management or process conditions or infrastructure improvement conditions. These licensed premises will be also subject to a more detailed risk assessment at the time of renewal or during inspections.*

The Association anticipates that the *Environmental Risk Assessment Framework* will provide more detail on how this will be applied in practice. The Association considers it is vital that the process for identifying and managing risk is rigorous and transparent. Local Government has expressed considerable concern about the impact of increased separation distance on existing facilities, particularly when those facilities are operating at best practice levels. It is suggested that an additional point be added to the Guidance Statement to provide assurance to existing facilities.

Recommendation: That an additional point be added to the Guidance Statement which identifies that existing facilities which do not meet the separation distances but are operating in line with best practice and not impacting on sensitive receptors will not be subject to additional regulatory controls.

8. *Where the location of a proposed prescribed premises does not meet the separation distance and the risks to public health or amenity are unacceptable, a works approvals or licence will not be issued.*

This is a general statement regarding the process for assessing applications, where separation distances are only one consideration. By including this point in the Guidance Statement there is a likelihood that it will be read as – if an operator does not meet the separation distance, they will not be issued a works approval or licence.

Recommendation: Remove Statement 8.

9. *Applications for works approvals or licences for premises or existing licensed premises that meet the relevant separation distance will be subject to a lower degree of regulatory control, unless there are additional factors relating to the activity or the site which impact on the degree of risk to public health or amenity.*

As mentioned, the Association suggests highlighting this point first.

10. *Additional factors which may impact on the degree of risk include:*
 - *the degree of sensitivity of the receptor (for example, childcare centres, aged facilities and hospitals are of higher sensitivity);*
 - *non-typical emissions (by type or volume);*
 - *the size, production or design capacity, process, products, fuel or emission controls associated with the activity or proposal;*
 - *where fugitive emissions are relevant, the type and level of management controls;*
 - *complexity and uniqueness of terrain (for example, where topographical features affect the pathway of the emission to the receptor); or*
 - *cumulative impacts (for example, where the facilities are located within an industrial zone).*

The Association requests a more comprehensive list of, and/or the characteristics of sensitive receptors. This will assist Local Government in determining appropriate locations for any prescribed premises that it operates. The Association also suggests that a definition be included of non-typical emissions. The Association is supportive of the consideration of cumulative impacts but considers a framework needs to be put in place to fairly assess these factors.

Recommendation: That the Department provides a list of and/or the characteristics of sensitive receptors.

Recommendation: That the Department establishes a framework for assessing cumulative impacts.

4.2.1 Review mechanism

The Association notes that the Guidance Statement will be “*reviewed no later than as soon as practicable following the fifth year of its commencement.*” Given that this document is part of a wider reform package, it may be useful to review the document sooner, to assess if it is working effectively or causing unintended consequences.

Recommendation: That the Department considers reviewing the Guidance Statement within two years.

4.2.2 Separation Distances

Prescribed premises that Local Government may operate have been identified in Appendix 1 and the separation distances compared with those in other States. Of particular concern to Local Government are the draft separation distances for landfills, incinerators, and composting facilities. Table 1 compares the draft separation distances for those facilities to the 2005 EPA Guidance and makes recommendations regarding the distances.

Another approach that the Department could consider is that used by the South Australian EPA in the *Guidelines for Separation Distances (2007)*, allows for adjustments to be made to the default separation distance considering types of terrain etc. This approach also allows proponents to present what measures and controls they will use to enable operation of a facility at a distance other than the recommended separation distance. The criteria that supports this approach could be used to build a body of knowledge within Government on how new technologies operate, and a basis on which to make informed licence decisions.

Draft DER Guidance Statement		2005 EPA Guidance	Comment/ Recommendation
Category No and Description	Emissions & Distance (m)	Description & buffer distance in metres and qualifying notes	
60	Incineration (100 kg or more per hour)	Noise, dust, odour 1,000 Incineration (biomedical, chemical, or organic waste) 500-1000 depending on size (plastic or rubber waste) 1000 (waste wood) 300 Waste disposal (waste- resource recovery plant) case by case	Recommendation The separation distance should be reduced in line with the requirements in other states. Alternatively, case-by-case assessments could be considered, as there is likely to be limited applications for this category.
63	Class I inert landfill site (500 tonnes or more per year)	Noise, dust 300 Waste disposal (inert landfill site (class 1)) 150 for	Justification is required for the doubling of the separation distance.

			residential uses & an internal buffer of 25 from boundary	Local Government is not aware of any well managed and regulated facilities for this category where there are significant public health and amenity issues with the current separation distances. Recommendation Retain the Separation Distance in the 2005 EPA Guidance.
64	Class II or III putrescible landfill site (20 tonnes or more per year)	Gaseous, noise, dust, odour 1,000	Waste disposal (putrescible landfill site (Class 2&3)) 500 for sensitive uses (subdivisions), 150 for single residences & an internal buffer of 35 from boundary	Justification is required for the doubling of the separation distance. Local Government is not aware of any well managed and regulated facilities for this category where there are significant public health and amenity issues with the current separation distances. Recommendation Retain the Separation Distance in the 2005 EPA Guidance.
65	Class IV secure landfill site	Gaseous, noise, dust, odour 1,000	Waste disposal (secure landfill site (Class 4)) case by case	Recommendation Adopt a case-by-case assessment, as there will only ever be a limited number of facilities in the State.
66	Class V intractable landfill site	Gaseous, noise, dust, odour 1,000	Waste disposal (intractable waste landfill site (Class 5)) case by case	Recommendation Adopt a case-by-case assessments, as there will only ever be a limited number of facilities in the State.
67 A	Compost manufacturing and soil blending (1,000 tonnes or more per year) outdoor uncovered	Noise, dust, odour 2,500 for up to 35,000t/y 1,800 for up to 20,000t/y 1,300 for up to 12,000t/y 800 for up to 5,000t/y 400 up to 2,000t/y Above 35,000t/y then case by case	Outdoor uncovered regularly turned windrows 1000 for manures, mixed food/putrescible & vegetative food waste; 500 for biosolids & 150 for greenwaste	Justification is required for the substantial increase in the separation distance. The majority of composting facilities will not meet the new separation distances. The draft separation distances have been interpreted as an 'absolute' by those operators looking to establish new outdoor Category 67A facilities (where the capital outlay required to adopt in-vessel or covered processing is prohibitive). No suitable land has been found within 50km of the feedstock material that created the need for a facility. Clarification is requested on why there will no longer be consideration of the type of material processed at Category 67A facilities. Clarification is also requested on the use of the phrase 'outdoor uncovered,' as opposed to 'outdoor uncovered, regularly turned windrows.' These approaches were previously used in the 2005 EPA Guidance.
	outdoor covered, turned windrows	2,200 for up to 50,000t/y 1,900 for up to 35,000t/y 1,500 for up to 20,000t/y 1,100 for up to 12,000t/y 650 for up to 5,000t/y 400 up to 2,000t/y Above 50,000t/y then case by case	Outdoor covered, turned windrows 750 for manures, mixed food/putrescible & vegetative food waste; 250 for biosolids & 150 for green waste	Local Government is not aware of any well managed and regulated facilities for this category where there are significant public health and amenity issues with the current separation distances. Recommendation Retain the Separation Distance in the 2005 EPA Guidance.
	outdoor covered windrows with continuous aeration	1,600 for up to 50,000t/y 1,300 for up to 35,000t/y 1,100 for up to 20,000t/y 850 for up to 12,000t/y 600 for up to 5,000t/y 400 for up to 2,000t/y	Outdoor covered windrows with continuous aeration 500 for manures, mixed food/putrescible & vegetative food waste; 250 for biosolids and 150 for green waste	

		Above 50,000t/y then case by case		
	enclosed windrows with odour control	1,000 for up to 50,000t/y 900 for up to 35,000t/y 800 for up to 20,000t/y 700 for up to 12,000t/y 550 for up to 5,000t/y 400 for up to 2,000 t/y Above 50,000t/y then case by case	Enclosed windrows with odour control 250 for manures, mixed food/putrescible & vegetative food waste; 150 for biosolids	
	in-vessel composting with odour control	600 for up to 50,000t/y 550 for up to 35,000t/y 500 for up to 20,000t/y 430 for up to 12,000t/y 350 for up to 5,000t/y 300 for up to 2,000t/y Above 50,000t/y then case by case	In-vessel composting with odour control 150 for manures, mixed food/putrescible & vegetative food waste; 150 for biosolids	
89	Putrescible landfill (more than 20 but less than 5,000 tonnes per year)	Gaseous, noise, dust, odour 1,000	Waste disposal (putrescible landfill site (Class 2&3)) 500 for sensitive uses (subdivisions), 150 for single residences & an internal buffer of 35 from boundary	Justification is required for the doubling of the separation distance. Local Government is not aware of any well managed and regulated facilities for this category where there are significant public health and amenity issues with the current separation distances. Recommendation Retain the Separation Distance in the 2005 EPA Guidance.

Table 1: Comparison of Draft Separation Distances, 2005 EPA Guidance and recommendations

4.2.3 Editorial

In reviewing the Guidance Statement the Association compared the information provided to that of the Regulations. This has highlighted some issues:

- Category 6 – ‘discharge’ reads ‘discharged’ in the regulations
- Category 10 – ‘stabilised’ reads ‘stabilized’ in the regulations
- Category 13 – include the phrase ‘or more per year’ as per the regulations
- Category 31 – ‘1,000 tonnes’ reads ‘100 tonnes’ in the regulations
- Category 33 – ‘5,000 tonnes’ reads ‘500 tonnes’ in the regulations
- Category 37 – include the phrase ‘10 tonnes or more per year’ as per the regulations
- Category 52 – include the word ‘a’ in the production and design capacity, as per the regulations
- Category 53 – ‘100 m³’ reads ‘1,000 tonnes or more per year’ in the regulations
- Category 55 – include the phrase ‘or more per year’ as per the regulations
- Category 61 – ‘1,000 tonnes’ reads ‘100 tonnes or more per year’ in the regulations
- Category 75 – ‘to cause discharge’ reads ‘to cause a discharge’ in the regulations
- Category 77 – delete the extra word ‘products’ as per the regulations
- Category 89 – ‘for burial’ reads ‘is accepted for burial’ in the regulations

The Guidance Statement uses different terminology to that of Environmental Standards that have already been released for consultation. For example, the draft Environmental Standard: composting only refers to sensitive environmental receptors, whereas the Guidance Statement on Separation Distances has a wider remit that includes 'beneficial use of land' and 'sensitive land uses.' There is also an instance where the wording used to describe types of composting processes has changed from that of the previous EPA advice. The phrase 'outdoor uncovered' has been used, as opposed to 'outdoor uncovered, regularly turned windrows,' which is a more appropriate description.

Recommendation: That the Department reviews references to the Regulations.

5. Implementation

The main concerns regarding implementation of the separation distances relate to the impact on existing facilities and how the distances will be used in practice by planning authorities and the DER.

There are concerns from operators that the new separation distances will be applied to prescribed premises that are compliant with guidance previously provided by the EPA. These concerns have arisen from the wide reaching scope outlined in the consultation paper: "*For existing licensed prescribed premises, the Guidance Statement will be applied as part of the risk assessment at the time of renewals and to inform inspections.*" There is considerable concern that subjective assessments will occur during license renewals and inspections.

Local Government invests significant funding in a range of facilities and needs assurance that the Department will not shut down prescribed premises that are not causing offsite impacts if it the facility does not meet the new separation distances. One suggestion of how such assurance could be provided has been included in Section 4.2 of this Submission. Industry also needs further information on the type of regulatory controls that will be required for existing facilities that do not meet the increased separation distance. It is anticipated the various Environmental Standards will provide some guidance on this. There have been calls from Local Government, for financial assistance to relocate and develop new prescribed premises that service the needs of the wider community

One of the key challenges associated with implementing this regulatory reform, relates to how the high level vision of the Department of Environment Regulation will be imbedded into the operation of the Department. The Association acknowledges the significant work of the Strategy and Reform team in facilitating this. However concern has been expressed by the sector regarding how the reform outcomes will be understood and implemented by those in other areas of the Department.

6. Conclusion

Local Government supports the intention of separation distances – to address issues with incompatible land uses at the planning stage, rather than when a facility is operating. However separation distances should not be used instead of a facility operating to minimise offsite impacts or in place of active regulation to ensure that licence conditions are being met.

In setting Separation Distances the Department should have an expectation that facilities will take all practical and reasonable measures to minimize the offsite impacts of their facility. That there may be impacts in emergency situations or if the facility is not operating at optimal levels is part of the consideration of the individual application and should be assessed as such through the risk framework the Department is developing. The Licence Documentation the Department is also consulting on provides more inputs into determining the level of risk associated with a facility.

The Association again thanks the Department for the opportunity to comment on the Guidance Statement. Local Government looks forward to a continued dialogue on the topic of separation distances, to create an environment in which there is certainty for operators of prescribed premises, sensitive receptors and the various decision making authorities.

Appendix 1 - Comparison with other States

Draft DER WA Guidance Statement		WA EPA Guidance 2005 (only those linked to actual categories numbers)	VIC EPA recommended separation distances for industrial residual air emissions 2013	ACT EPA Draft Separation Distance Guidelines for Air Emissions 2014 Noise impacts may require greater distances	SA EPA Guidelines for Separation Distances 2007 Distances are adjusted based on surface roughness and terrain	
Category No and Description	Emissions & Distance (m)	Description & buffer distance in metres and qualifying notes	Industry type, definition, recommended separation distances	Activity, description of activity and separation distance	Air separation Distances (noise can be more)	
13	Crushing of building material (1,000 tonnes per year) <i>Premises on which waste building or demolition material (for example, bricks, stones or concrete) is crushed or cleaned.</i>	Noise, dust 1,000	Crushing of building material 1000			
47	Scrap metal recovery (100 tonnes or more per year) <i>Premises (other than premises within category 45) on which metal scrap is fragmented or melted, including premises on which lead acid batteries are reprocessed.</i>	Noise, dust, odour 500	Scrap metal recycling works 300-500		Scrap metal recovery (Works at which scrap metals are treated in any type of fuel burning equipment or electrically heated furnaces or are disintegrated by mechanical means for recovery of metal, but excluding commercial printing establishments at which type metal is melted or re-melted in thermostatically controlled ports for the purpose of type casting) 500m	Scrap metal recovery – 500m
54	Sewage facility (100 m ³ or more per day) <i>Premises — (a) on which sewage is treated excluding septic tanks); or (b) from which treated sewage is discharged onto land or into waters.</i>	Noise, odour Case by case	Wastewater treatment plant >100m ³ /day buffer studies in progress to determine appropriate separation distances Wastewater disposal site (treated sewerage) >100m ³ /day case by case			
55	Livestock saleyard or holding pen (10,000 animals per year or more)	Noise, dust, odour 1,000	Livestock saleyard or holding pen at least 1000, depending on size	Stock saleyard (where pigs, cattle or other stock are temporarily confined for sale, transport or processing >500) 500m	Saleyard (>50,000 sheep equivalent units) 500m >25,000 – 50,000 sheep equivalent units 200m	Saleyards (>50,000 equivalent sheep units) 500m

	<i>Premises on which live animals are held pending their sale, shipment or slaughter</i>					>25,000 – 50,000 sheep equivalent units 200m
57	Used tyre storage (general) (100 tyres or more) <i>Premises (other than premises within category 56) on which tyres are stored.</i>	Gaseous, noise, dust, odour 1,000	Used tyre storage (stored) 100-200 depending on size Used tyre storage (recycling) 500-1000			
60	Incineration (100 kg or more per hour) <i>Premises (other than premises within category 59) on which waste, excluding clean paper and cardboard, is incinerated.</i>	Noise, dust, odour 1,000	Incineration (biomedical, chemical, or organic waste) 500-1000 depending on size (plastic or rubber waste) 1000 (waste wood) 300 Waste disposal (waste-resource recovery plant) case by case	Advanced resource recovery technology facility (facility for the immobilisation, thermal degradation, chemical conversion, biological oxidisation (aerobic or anaerobic), incineration, gasification or other treatment of solid waste) – case by case	Incineration Cremation – 150m Solid Municipal waste – 500m	Incineration Cremation – 150m Solid municipal waste – 500m
61	Liquid waste facility (1,000 tonnes or more per year) <i>Premises on which liquid waste produced on other premises (other than sewerage waste) is stored, reprocessed, treated or irrigated.</i>	Noise, odour 1,000	Waste disposal (industrial liquid waste) case by case			
61 A	Solid waste facility (1,000 tonnes or more per year) <i>Premises (other than premises within category 67A) on which solid waste produced on other premises is stored, reprocessed, treated, or discharged onto land.</i>	Noise, dust, odour 500	Waste disposal (waste-resource recovery plant) case by case	Advanced resource recovery technology facility (facility for the immobilisation, thermal degradation, chemical conversion, biological oxidisation (aerobic or anaerobic), incineration, gasification or other treatment of solid waste) – case by case Transfer station 250m Also have some type of link to material recovery	Material recovery facility – 300m Waste transfer station – 300m	Waste or recycling depots – see landfill guidance and biosolids guidelines 'other' 300m
62	Solid waste depot (500 tonnes or more per year) <i>Premises on which waste is stored, or sorted, pending final disposal or re-use.</i>	Noise, dust, odour 200	Waste disposal (waste depot) 200	Transfer station 250m	Material recovery facility – 300m Waste transfer station – 300m	Waste or recycling depots – see landfill guidance and biosolids guidelines 'other' 300m

63	Class I inert landfill site (500 tonnes or more per year) <i>Premises on which waste (as determined by reference to the waste type set out in the document entitled "Landfill Waste Classification and Waste Definitions 1996" published by the Chief Executive Officer and as amended from time to time) is accepted for burial.</i>	Noise, dust 300	Waste disposal (inert landfill site (class 1)) 150 for residential uses & an internal buffer of 25 from boundary	Landfill BPEM – siting, design, operation and rehabilitation of landfills, EPA Publication 788.1 2010	Landfill (municipal solid waste and commercial and industrial waste landfill activities) 500m	Waste or recycling depots – see landfill guidance and biosolids guidelines. Landfill 500m
64	Class II or III putrescible landfill site (20 tonnes or more per year) <i>Premises on which waste (as determined by reference to the waste type set out in the document entitled "Landfill Waste Classification and Waste Definitions 1996" published by the Chief Executive Officer and as amended from time to time) is accepted for burial.</i>	Gaseous, noise, dust, odour 1,000	Waste disposal (putrescible landfill site (Class 2&3)) 500 for sensitive uses (subdivisions), 150 for single residences & an internal buffer of 35 from boundary	Landfill BPEM – siting, design, operation and rehabilitation of landfills, EPA Publication 788.1 2010	Landfill (municipal solid waste and commercial and industrial waste landfill activities) 500m	Waste or recycling depots – see landfill guidance and biosolids guidelines. Landfill 500m
65	Class IV secure landfill site <i>Premises on which waste (as determined by reference to the waste type set out in the document entitled "Landfill Waste Classification and Waste Definitions 1996" published by the Chief Executive Officer and as amended from time to time) is accepted for burial.</i>	Gaseous, noise, dust, odour 1,000	Waste disposal (secure landfill site (Class 4)) case by case	Landfill BPEM – siting, design, operation and rehabilitation of landfills, EPA Publication 788.1 2010 Prescribed industrial waste treatment facility – 500m	Landfill (municipal solid waste and commercial and industrial waste landfill activities) 500m	Waste or recycling depots – see landfill guidance and biosolids guidelines. Landfill 500m
66	Class V intractable landfill site <i>Premises on which waste (as determined by reference to the waste type set out in the document entitled "Landfill Waste Classification and Waste Definitions 1996" published by the Chief Executive Officer and as amended from time to time) is accepted for burial.</i>	Gaseous, noise, dust, odour 1,000	Waste disposal (intractable waste landfill site (Class 5)) case by case	Landfill BPEM – siting, design, operation and rehabilitation of landfills, EPA Publication 788.1 2010	Landfill (municipal solid waste and commercial and industrial waste landfill activities) 500m	Waste or recycling depots – see landfill guidance and biosolids guidelines. Landfill 500m
67 A	Compost manufacturing and soil blending (1,000 tonnes or more per year)	Noise, dust, odour	Outdoor uncovered regularly turned windrows 1000 for manures, mixed	Green waste composting facility Separation distances for large composting facilities, EPA	Composting works > 200 tonnes/year – 1,000m >20 & < 200 tonnes/year – 300m	Waste or recycling depots – see landfill guidance

	<p><i>Premises on which organic material (excluding silage) or waste is stored pending processing, mixing, drying or composting to produce commercial quantities of compost or blended soils</i></p> <p>outdoor uncovered</p>	<p>2,500 for up to 35,000t/y 1,800 for up to 20,000t/y 1,300 for up to 12,000t/y 800 for up to 5,000t/y 400 up to 2,000t/y</p> <p>Above 35,000t/y then case by case</p>	<p>food/putrescible & vegetative food waste; 500 for biosolids & 150 for greenwaste</p> <p>Mushroom farm using onsite blended soils or compost 500-1000, depending on size</p>	<p>Publication 1495, 2012 Draft guidelines for separation distances for composting facilities, EPA Publication 1445, 2012</p> <p>Mushroom farm (using blended solids or compost for the production of mushrooms) case by case</p>	<p>Biosolid depot (receiving, drying, composting, mixing or processing biosolids) 400m</p>	<p>and biosolids guidelines. Biosolids depot 400m</p> <p>Composting works >200 tonnes/yr 1,000m >20<200tonnes/yr 300m <20 tonnes/yr (murray river) 100m</p>
	<p>outdoor covered, turned windrows</p>	<p>2,200 for up to 50,000t/y 1,900 for up to 35,000t/y 1,500 for up to 20,000t/y 1,100 for up to 12,000t/y 650 for up to 5,000t/y 400 up to 2,000t/y</p> <p>Above 50,000t/y then case by case</p>	<p>Outdoor covered, turned windrows 750 for manures, mixed food/putrescible & vegetative food waste; 250 for biosolids & 150 for green waste</p>			
	<p>outdoor covered windrows with continuous aeration</p>	<p>1,600 for up to 50,000t/y 1,300 for up to 35,000t/y 1,100 for up to 20,000t/y 850 for up to 12,000t/y 600 for up to 5,000t/y 400 for up to 2,000t/y</p>	<p>Outdoor covered windrows with continuous aeration 500 for manures, mixed food/putrescible & vegetative food waste; 250 for biosolids and 150 for green waste</p>			

		Above 50,000t/y then case by case				
	enclosed windrows with odour control	1,000 for up to 50,000t/y 900 for up to 35,000t/y 800 for up to 20,000t/y 700 for up to 12,000t/y 550 for up to 5,000t/y 400 for up to 2,000 t/y Above 50,000t/y then case by case	Enclosed windrows with odour control 250 for manures, mixed food/putrescible & vegetative food waste; 150 for biosolids			
	in-vessel composting with odour control	600 for up to 50,000t/y 550 for up to 35,000t/y 500 for up to 20,000t/y 430 for up to 12,000t/y 350 for up to 5,000t/y 300 for up to 2,000t/y Above 50,000t/y then case by case	In-vessel composting with odour control 150 for manures, mixed food/putrescible & vegetative food waste; 150 for biosolids			
85	Sewage facility (More than 20 but less than 100 m ³ per day) premises: <i>(a) on which sewage is treated (excluding septic tanks); or</i> <i>(b) from which treated sewage is discharged onto land or into waters</i>	Noise, odour 1,000	Wastewater treatment plant 20-100m ³ /day buffer studies in progress to determine appropriate separation distances Wastewater disposal site (treated sewerage)	Sewerage treatment plant (>5,000 litres/day) see section 11 of document	Sewage treatment works – based on population. From 1,000 population requiring 100m to >15,000 population requiring individual assessment	Sewage treatment works – based on population. From 1,000 population requiring 100m to >15,000 requiring individual assessment

			>100m ³ /day case by case			
85 A	Sewage pumping station <i>Premises on which sewage is pumped (other than to or from septic tanks) and where a discharge of waste from the station may enter the Swan River or the Canning River.</i>	Noise, odour 150		Sewerage treatment plant (>5,000 litres/day) see section 11 of document	Sewage treatment works – based on population & type of lagoon. From 1,000 population requiring 100m to >15,000 population requiring individual assessment	Sewage treatment works – based on population. From 1,000 population requiring 100m to >15,000 requiring individual assessment
89	Putrescible landfill (more than 20 but less than 5,000 tonnes per year) <i>Accepting of waste (as determined by reference to the waste type set out in the document entitled "Landfill Waste Classification and Waste Definitions 1996" published by the Chief Executive Officer and as amended from time to time) for burial.</i>	Gaseous, noise, dust, odour 1,000	Waste disposal (putrescible landfill site (Class 2&3)) 500 for sensitive uses (subdivisions), 150 for single residences & an internal buffer of 35 from boundary	Landfill BPEM – siting, design, operation and rehabilitation of landfills, EPA Publication 788.1 2010		