

Submission on the EPA Environmental Assessment Guideline: Separation Distances between Industrial and Sensitive Land Uses

November 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 put before Council at the earliest opportunity (Wednesday, 16 December). The Authority will be informed of any changes to this Submission following consideration by MWAC.

Executive Summary

The Association welcomes the opportunity to comment on the draft *Environmental Assessment Guideline for Separation Distances between Industrial and Sensitive Land Uses* (the Guideline). 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.

Feedback from Local Government planners indicates that the EPA document is user friendly and provides more context than the previous EPA guidance. However as has been raised with the Department of Environment Regulation during consultation on their draft *Guidance Statement: separation distances*, there is a need for the basis of the separation distances to be demonstrated. For some categories of prescribed premises there has been a substantial increase to the separation distances, from that of 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.

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. This Submission should be read in conjunction with the WALGA Submission on the DER's draft Guidance Statement on Separation Distances.

1. Introduction

Local Government is commenting on the Guideline 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 Guideline will apply.

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.

2. Supported Approaches

From a Local Government planning perspective, the draft EPA Guideline features a number of improvements from the previous advice, such as increased clarity on how separation distances are measured, how the EPA will use the Guideline, how the Guideline interacts with the planning system and the DER's consideration of separation distances. Particularly useful, is the definition of terms such as buffer and separation distances. The table of recommended separation distances between industrial and sensitive land uses is generally consistent with the previous document with additions and omission in land uses. Local Government supports this approach, from both a planning and operators perspective. Areas where divergence from the previous EPA advice could have an adverse impact on Local Government are explored further in Section 4 of this Submission.

The Association supports the expectation of the EPA, for operators of an emitting industry to take all reasonable and practicable measures to prevent or minimise emissions from the premises. This approach is reasonable and in line with how Local Government facilities operate.

3. Use of the Separation Distances

The Association is aware that the Environmental Protection Authority has used the Department of Environment Regulation's draft separation distances for prescribed premises as outlined in the draft *Guidance Statement: Separation Distances*. The DER intends the separation distances to be used in conjunction with a Risk Assessment Framework. The use of the separation distances divorced from this context could cause a number of unintended consequences for industry. The Association agrees that the DER is 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. It is likely that planning decisions may be influenced by the distances outlined in both the DER Guidance Statement and the EPA Guideline. It is important that the Guideline reflects current industry practice, or there could be an increase in the number of Local Government decisions contested and possibly taken to the State Administrative Tribunal.

Throughout the consultation period, it has become apparent that other agencies will adopt the separation distances for their own projects. For example, to inform policy on state industrial buffers (*State Planning Policy 2.5 Land Use Planning in Rural Areas*¹ and *State Planning Policy 4.1 State Industrial Buffer*²). Another example includes the joint Strategic Assessment of the Perth and Peel Regions by the commonwealth and state governments. If the advice on separation distances is wrong or radically changes, there will be significant ramifications for future development in Western Australia.

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.

4. Draft Guideline on Separation Distances

This section of the Submission relates to concerns that have been raised with the Association throughout the consultation period.

¹ 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>

² Department of Planning (2009). State Planning Policy 4.1 State Industrial Buffer. Available online. <http://www.planning.wa.gov.au/State-planning-policies.asp>

4.1 Evidence Base used to Determine Separation Distances

The EPA Guideline indicates that:

“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.”

The Association is concerned that this information/expertise has not been provided by the DER to justify the draft Separation Distances proposed. How the separation distances have been determined needs to be presented in a consistent manner by both the 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 and the Authority present the rationale or evidence used to inform the increase in separation distances.

4.2 Omitted Land Uses

The omission of land uses such as Mushroom Farms and Clay Extraction from Appendix 1 of the Guidelines will prove to be problematic for Local Governments where these land uses still exist. As one of the uses of the Guideline will be to inform the planning system, further investigation is required on the existence of omitted land uses previously described in the 2005 EPA document.

4.3 Changes to Separation Distances

As a provider of a range of community services and infrastructure, Local Government is concerned that increases to separation distances will affect the operation of a number of its prescribed premises. Of particular concern to Local Government are the draft separation distances proposed for landfills, incinerators, and composting facilities. These concerns have also been raised with the Department of Environment Regulation. Table 1 compares the draft separation distances for these facilities to the 2005 EPA Guidance and makes recommendations regarding the distances.

Another approach that the Authority could consider adopting, is that used by the South Australian EPA in the *Guidelines for Separation Distances (2007)*. This approach 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 EPA Guideline	2005 EPA Guidance	Comment / Recommendation
Incineration (for biomedical, chemical or organic waste, plastic or rubber waste) 1,000m	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.
Inert landfill site (Class I) (Waste, which meets the waste type as set out in “Landfill Waste Classification and Waste Definitions 1996” as	Waste disposal (inert landfill site (class 1)) 150 for residential uses & an internal buffer of 25 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.

amended from time to time, is accepted for burial) 300m		Recommendation Retain the Separation Distance in the 2005 EPA Guidance.
Putrescible landfill site (Class II or III) (Waste, which meets the waste type as set out in "Landfill Waste Classification and Waste Definitions 1996" as amended from time to time, is accepted for burial) 1,000m	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.
Secure landfill site (Class IV) (Waste, which meets the waste type as set out in "Landfill Waste Classification and Waste Definitions 1996" as amended from time to time, is accepted for burial) 1,000m	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.
Intractable landfill site (Class V) (Waste, which meets the waste type as set out in "Landfill Waste Classification and Waste Definitions 1996" as amended from time to time, is accepted for burial) 1,000m	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.
Liquid waste facility (liquid waste from other premises is stored, reprocessed, treated or irrigated/discharged) 1,000m	Industrial liquid waste (site on which liquid waste from other premises is stored, reprocessed, treated or irrigated/discharged) case by case	Justification is required for the change in approach from a case by case assessment to a set distance.
Solid waste facility (solid waste produced on other premises is stored, reprocessed, treated or discharged to land) 500m	Waste – resource recovery plant (premises on which waste is stored, reprocessed, treated or discharged to land) case by case	Justification is required for the change in approach from a case by case assessment to a set distance.
Compost manufacturing and soil blending <i>outdoor uncovered</i> 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 and are considered to be a more accurate description of current practice.
<i>outdoor covered, turned windrows</i> 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	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.

Above 50,000t/y then case by case		Recommendation Retain the Separation Distance in the 2005 EPA Guidance.
<i>outdoor covered windrows with continuous aeration</i> 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 Above 50,000t/y then case by case	Outdoor covered windrows with continuous aeration 500 for manures, mixed food/putrescible & vegetative food waste; 250 for biosolids and 150 for green waste	
<i>enclosed windrows with odour control</i> 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	
<i>in-vessel composting with odour control</i> 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	
Used tyre storage <i>Bulk storage of used tyres</i> 1,000m	Used tyre storage (premises on which used tyres are stored) 100-200m, depending on size	Justification is required for the substantial increase in the separation distance and the removal of consideration of scale. The Association supports a separation distance that is linked to the scale of operations.

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

4.4 Review mechanism

The Association notes that the previous EPA Guideline contained a five year review mechanism. There has been at least one instance where a Local Government planning decision based on the 2005 EPA document was challenged through the State Administrative Tribunal as it had not been reviewed by the date specified in the Guideline. To ensure relevancy it must be clear when the document will be reviewed.

Recommendation: That the Authority considers how the Guidance Statement will be reviewed.

5. Implementation

The main concerns on implementation of the separation distances relate to the impact on existing facilities and how the distances will be used in practice by planning authorities. There are concerns from operators that the new separation distances will be applied to prescribed premises that meet the separation distances previously provided by the EPA. This would be problematic in instances where an operator has to navigate the planning system, for a minor change in land use.

The Association appreciates the efforts of the Authority to maintain consistency of approach and advice to that of the Department of Environment Regulation's Guidance Statement. Additionally, the open approach to providing additional advice on planning matters is welcomed. *"Where an industry is not listed below, or a case by case approach is recommended planning agencies should seek the advice of the OEPA."*

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. The Association again thanks the Authority for the opportunity to comment on the Guideline. 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.