



Environmental Protection Act 1986

Hon Amber-Jade Sanderson MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST AMENDMENT OF LICENCE L8993/2016/1 GUILDFORD MATERIALS RECOVERY FACILITY, 72 HYNE ROAD SOUTH GUILDFORD

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 102(3)(a) of the *Environmental Protection Act 1986* in objection to the amendment of the above licence. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Alliance for a Clean Environment/National Toxics Network; and Guildford Association Inc.
Proponent:	Cleanaway Pty Ltd
Proposal description:	To rebuild the Materials Recovery Facility following a significant fire event in November 2019.
Minister's Decision:	The Minister allowed in part the appeals.
Date of Decision:	22 April 2021

REASONS FOR MINISTER'S DECISION

Two appeals were received objecting to the amendment of the above licence by the Department of Water and Environmental Regulation (DWER) in relation to the Guildford Materials Recovery Facility (MRF).

In November 2019, there was an uncontained fire at the premises causing emissions to air as well as the discharge of fire washwater to the Swan River.

At the time of the fire, the premises was operating under the version of the licence granted on 11 May 2017, and which expires in 2032. The licence holder (Cleanaway Pty Ltd) subsequently requested approval from DWER to reconstruct the premises.

Due to the nature of the emissions released during the fire, DWER determined through a risk assessment that additional regulatory controls were required. DWER amended the licence on 14 August 2020, authorising reconstruction and operation subject to additional conditions, and it was against this amendment that the appeals were received.

The concerns raised by the appeals included that DWER's risk assessment was inadequate and relied on insufficient information, and that the impact of the fire demonstrated that the premises is inappropriately located too close to sensitive receptors. The Minister noted the appeals seek revocation of the licence, and relocation of the premises away from residential and other sensitive receptors.

The right of appeal in this case is against the amendment of the licence. As the Appeals Convenor has noted, it is not open to the Minister on appeal to revoke the licence – as such, the Minister considered the appeals in the context of the amendments made, including the robustness of the conditions applied to ensure the risk of an event of the nature that occurred in November 2019 is minimised.

Based on the information before her, the Minister was of the view that DWER considered the risks associated with the premises, and that its assessment was informed by data and learnings from the November 2019 fire. DWER applied a number of additional controls to minimise the likelihood and consequence of fire occurring again, including requiring baled plastics and baled paper to be stored separately in bunkers, and requiring upgrades to the premises' stormwater infrastructure.

It followed that the Minister considered DWER's decision to amend the licence was justified.

Notwithstanding, the Minister considered that the controls for fire washwater could be improved by requiring automatic closure of gate valves when the warehouse fire system is activated. The Minister therefore allowed the appeals to the extent that the licence conditions are amended to this effect.

The full reasons for the Minister's decision follow.

Smoke and particulate emissions

In relation to smoke and particulate emissions, the appeals submitted that no fire risk is acceptable, that exposure to such emissions is unacceptable, and that monitoring from the fire event did not provide sufficiently reliable data to inform a risk assessment.

In response to the appeals, DWER advised it is not possible to provide a guarantee on any premises that there will be no fires and no community or environmental exposure to emissions.

In determining to amend the licence, DWER revisited its original risk assessment for smoke and particulate emissions, which was informed by actual concentrations of pollutants recorded during the fire event, finding the risk rating to be 'High'.

The Minister understood that Cleanaway also commissioned a Fire Risk Assessment Review which, having considered potential ignition and fuel sources at the premises, identified proposed fire control systems and infrastructure designed to address shortcomings identified from the November 2019 fire.

The Minister was advised that the Fire Risk Assessment Review was reviewed by the Department of Fire and Emergency Services, which advised it was satisfied with the system and infrastructure controls proposed.

DWER subsequently applied the controls to the amended licence, as well as additional management/operational controls. Further details on the specifics of the controls are included in the Appeals Convenor's report.

Having reviewed this information, the Minister was satisfied that the controls imposed are appropriate towards reducing the risk of a fire, improving the response measures to a fire, and ultimately reducing the magnitude of a fire, should one occur.

It followed that the Minister was of the view that DWER had applied controls relevant towards mitigating the identified risk of smoke and particulate emissions at the premises.

Fire washwater

On the matter of fire washwater, the Minister noted the appeals submitted that the on-premises containment approved by the amendment is insufficient based on the volume of water estimated to have been used during the November 2019 fire. It was also submitted that despite the discharge to the Swan River, no river sediment testing appears to have been undertaken to inform the risk assessment.

In response to the appeals, DWER advised that the capacity of the containment system is based on Australian Standard AS 2118.1 *Automatic fire sprinkler systems* and that the provision of infrastructure sufficient to withhold the entire volume of washwater from the November 2019 fire is not considered practical.

The Minister noted that DWER applied condition 20(c) on the amended licence which requires the licence holder to ensure that water and other waste generated from firefighting activities on the premises are captured and contained within the premises.

A range of other conditions were also applied to support this outcome including requirements for sealing areas to prevent infiltration, isolation of the premises catchment area from the offsite stormwater drainage network, installation of pipes and pumps for extraction of accumulating washwater, appropriate maintenance and operation of infrastructure, and development and implementation of emergency response procedures.

The Minister considered that these conditions, combined with a further requirement for automatic closure of gate valves when the warehouse fire system is activated, are appropriate towards mitigating the risk of fire washwater discharge from the premises.

Contamination

The Minister noted that the appeals submitted that the premises is classified under the *Contaminated Sites Act 2003* (CS Act) and that DWER's risk assessment and the conditions applied did not adequately consider potential emissions associated with contamination.

The Minister was advised that following a post-fire detailed site investigation commissioned by Cleanaway, the premises was classified under the CS Act as *possibly contaminated – investigation required* on 27 May 2020.

The contamination identified relates to nutrients, hydrocarbons and per- and polyfluoroalkyl substances (PFAS) found in groundwater beneath the MRF.

In assessing the licence amendment application, DWER noted that nutrient and PFAS concentrations were possibly representative of background levels, and that further investigation of the source, taking into account seasonal variations in groundwater conditions, is required from the licence holder by December 2021.

The Minister was advised that reconstruction works do not require dewatering, and that no contamination was found in the soil and sediments that would pose a risk for continued industrial land-use at the site.

The Minister noted that should additional investigations identify an ongoing contamination concern, DWER has options under both the CS Act and the *Environmental Protection Act 1986* (EP Act) to address the management or remediation of impacts.

It followed that the Minister was satisfied contamination impacts have been appropriately considered by DWER through the licence amendment.

DWER will now give effect to the Minister's decision in accordance with section 110 of the EP Act by amending the licence. The precise wording of the additional conditions will be determined by DWER.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace

Perth WA 6000

Tel: (08) 6364 7990

www.appealsconvenor.wa.gov.au