



Environmental Protection Act 1986

**Hon Donna Faragher JP MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF LICENCE L5099/1974/12 ESPERANCE PORT AUTHORITY, ESPERANCE

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 102 of the *Environmental Protection Act 1986* in relation to the conditions of a licence issued by the Department of Environment and Conservation. 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:	Mr Paul Llewellyn Esperance Port Authority Ms D Henderson Ms M Crisp – Locals for Esperance Development Ms M Waters – Parents of Esperance Active for Child Health Ms M Rogers Shire of Esperance Mr R D Jones – Alliance for a Clean Environment BHP Billiton Nickel West Pty Ltd Ms V Young and Mr M Litherland Mr G Warren and M Handley
Licence holder:	Esperance Port Authority
Premises:	Esperance Port Authority
Minister's Decision:	The Minister upheld the appeals in part
Date of Decision:	4 November 2009

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Environment and Conservation

(DEC) on the matters raised in the appeal. The Minister also received a report from the Appeals Convenor which sets out the background and other matters relevant to the appeals. It can be downloaded from www.appealsconvenor.wa.gov.au.

A total of 11 appeals were received including one appeal lodged by the Licensee, the Esperance Port Authority (EsPA).

The grounds of appeal were summarised by the Appeals Convenor under the following headings:

1. Materials authorised to be loaded or unloaded;
2. Emissions reduction works and purpose built facilities;
3. Cap on export of bulk nickel sulphide concentrate;
4. Loading restrictions in certain wind conditions;
5. Emissions from side tipping trucks;
6. Continuation of nickel sulphide concentrate loading protocol;
7. Requirement for nickel sulphide concentrate loading protocol;
8. Nickel emissions target;
9. Emissions limit for particulates;
10. Timeframe for emissions targets;
11. Odour emissions;
12. Emissions not limited to ship loading;
13. Financial liability;
14. Risk assessment for nickel emissions; and
15. Discharges to water.

The Minister understood that the outcomes sought by appellants were for various amendments to be made to the Licence conditions.

APPEAL DETERMINATION

After considering the concerns raised in the appeals, and the advice of the Appeals Convenor and the DEC, the Minister upheld the appeals to the extent that:

1. Condition 2(a) of the Licence be modified with the intent that the emissions reduction works shall be completed **and** commissioned by the specified dates;
2. Condition 2(f) be amended, by removing the words '[u]ntil after the Licensee has completed and commissioned the emission reductions works listed Column 1 of Table 1 of the Nickel Shiploading circuit'; and
3. Table 2 be amended by inserting '24 hour' into the heading of Column 2.

The Minister's decision against each ground of appeal is outlined in Attachment 1. The Minister's consideration of the key issues is detailed below.

APPEAL CONSIDERATION

The Minister noted the key concerns raised in the appeals relate to nickel emissions from the Premises. The Minister understood that appellants are concerned about the potential impact of nickel emissions on the health and welfare of the Esperance community.

Appellants submitted that there is a lack of evidence or engineering guarantees that the emissions reduction works (Condition 2(a)) or purpose built bulk handling facilities (Condition 4) will result in compliance with Department of Health guidelines. In relation to this element of the appeals, the Minister noted that Condition 6 (Table 2) of the Licence specifies ambient emissions concentration targets that the Licensee is required to meet. The Minister understood that the ambient concentration target for nickel in air is the Department of Health's 24 hour guideline. The Minister also noted Condition 7. Condition 7 requires the Licensee to investigate and report on any exceedence of the targets, including details of corrective action taken or planned to prevent a recurrence of the exceedence. The Minister was advised that Conditions 6 and 7 effectively compel the Licensee to ensure its activities perform to a standard.

In relation to Condition 2(c), appellants submitted that, until a system of infrastructure is in place which will guarantee that nickel emissions will remain below both the 24 hour and annual Department of Health guidelines, the amount of bulk nickel sulphide handled at the Premises should be capped at 175,000 tonnes per annum with a loading rate of 600 tonnes per hour. In contrast to this view, one appellant submitted that a limit on the amount of bulk nickel sulphide concentrate that can be exported from the Premises, as imposed by Condition 2(c), is an inappropriate way of seeking to manage the risk of nickel dust emissions.

The Minister noted the advice received by the Appeals Convenor from the DEC, at the time the Appeals Convenor's Report was being finalised, that the amount of bulk nickel sulphide concentrate that had been exported from the Premises from 6 October 2008 was in the order of 160,000 tonnes, well below the 200,000 limit specified in Condition 2(c). The Minister was also informed that the emissions reduction works required by Condition 2(a) of the Licence are now complete.

The Minister further understood that nickel emissions would continue to be controlled by means other than a limitation on the amount of bulk nickel concentrate exported by the Licensee. Nickel emissions would be controlled through the implementation of a nickel sulphide concentrate loading protocol, and by Conditions 6 and 7 of the Licence as previously discussed.

Appellants further contended that, until a satisfactory infrastructure system is in place, a protocol that restricts the handling of bulk nickel sulphide concentrate when the wind is blowing from within the wind arc of 45 – 180 degrees should be included in the Licence.

The Minister was supportive of the requirement for a nickel sulphide concentrate loading protocol being maintained in the Licence. The Minister understood that the objective of the protocol is to meet the ambient concentration target for nickel in air set out in Condition 6 of the Licence and, in the event of an exceedance, corrective action would need to be undertaken in accordance with Condition 7. It follows that, irrespective of a specific restriction on loading to a defined wind arc, the Licensee will need to operate with the objective of meeting the targets set out in Condition 6.

The Minister was informed that, since the Licence came into effect, monitoring has shown that ambient concentrations of nickel are consistently below the target. The Minister considered that this provides a good indication that the loading protocol, which is required to take wind conditions into account, is performing well.

Appellants submitted that the nickel sulphide concentrate loading protocol required by Condition 2(f) should not be tied to the completion of the emissions reduction works. It was contended that the nickel loading protocol should continue beyond the completion of the proposed improvements to the existing infrastructure as a mechanism to protect the neighbouring community.

As previously noted, the Minister was supportive of the requirement for a nickel sulphide concentrate loading protocol being maintained in the Licence. The Minister noted the DEC's view that the removal of the time limit in Condition 2(f) would not affect the operation of the Licence and therefore it does not object to such an amendment. The Minister understood that the emissions reduction works, as the description suggests, are for the purpose of reducing emissions from the existing Nickel Shiploading circuit and it follows that it may not be necessary for a protocol to be in place that takes wind conditions into account following the completion of these works. Nevertheless, the Appeals Convenor advised that the protocol has proven to be a practical method to proactively minimise emissions and should, therefore, be maintained in the Licence.

Another key contention raised in the appeals was that the Licence should include a 24 hour ambient nickel concentration limit rather than the target currently applied through Condition 6. It was also contended that the Licence should include an annual ambient concentration limit, in addition to a 24 hour limit.

In considering this element of the appeals, the Minister noted several key points detailed in the Appeals Convenor's Report and summarised as follows:

- The Department of Health recommended that the 24 hour guideline be included in the Licence as a target;
- Condition 6 of the Licence is one condition among several concerned with the management of nickel dust from the Premises;
- Condition 7 of the Licence requires a full investigation and reporting of any exceedance of the target including details of corrective action taken or planned to be taken;
- Given the multiple mechanisms in the Licence concerned with the management of nickel dust emissions from the Premises, it is considered likely that there will

be a downward trend in nickel dust emissions from the Premises consistent with Department of Health's expectations; and

- The DEC does not consider it appropriate to include the annual guideline in an operational licence given its nature in that it requires exposure above $0.003\mu\text{g}/\text{m}^3$ over 24 hours every day for a 70 year life span.

Whilst the annual guideline has not been included in the Licence as either a target or a limit, the Minister was advised that the DEC provides monitoring data to the Department of Health enabling the Department of Health to monitor trends towards long term health effects. The Minister wrote to the Minister for Health and the DEC to convey a strong expectation that this cooperative approach will continue in order to provide the Esperance community with confidence that their health is not adversely affected by nickel emissions from the Port.

The Minister conveyed to the DEC an expectation that, should additional monitoring data be required by the Department of Health to determine if the annual ambient nickel concentration guideline is being met, the Licence will be amended to require the collection of this additional data.

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*.

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Attachment 1 Summary of Decision

Appeal Ground	Determination	Page of AC report
1. Materials authorised to be loaded or unloaded (Condition 1)	Dismissed	4
2. Emissions reduction works and purpose built facilities (Conditions 2a and 4)	Dismissed	7
3. Cap on export of bulk nickel sulphide concentrate (Condition 2c)	Dismissed	12
4. Loading restrictions in certain wind conditions	Dismissed	16
5. Emissions from side tipping trucks (Condition 2e)	Allowed in part Condition 2(a) of the Licence to be modified with the intent that the emissions reduction works shall be completed <u>and</u> commissioned by the specified dates.	18
6. Continuation of bulk nickel sulphide concentrate loading protocol (Condition 2f)	Upheld Condition 2(f) to be amended, by removing the words '[u]ntil after the Licensee has completed and commissioned the emission reductions works listed Column 1 of Table 1 of the Nickel Shiploading circuit'.	20
7. Requirement for bulk nickel sulphide concentrate loading protocol (Condition 2f)	Dismissed	21
8. Nickel emissions target (Condition 6)	Dismissed	22
9. Emissions limit for particulates (Condition 6)	Dismissed	29
10. Timeframe for emissions targets (Condition 6)	Upheld Table 2 to be amended by inserting '24 hour' into the heading of Column 2.	29
11. Odour emissions	Dismissed	30
12. Emissions not limited to ship loading	Dismissed	31
13. Financial liability	Dismissed	32
14. Risk assessment for nickel emissions	Dismissed	34
15. Discharges to water	Dismissed	36