



Your Ref: Petition 143
Our Ref: 26-11978-2

Hon Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Mr Ellis

PETITION NO. 143 - ENVIRONMENTAL LEGACY OF MINING

I refer to your letter dated 21 March 2012 requesting information on the submission provided by the Hon Robin Chapple MLC to the Standing Committee on Environment and Public Affairs.

My responses to each of the questions raised by the Hon Robin Chapple MLC in his submission are attached (Attachment 1).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Norman Moore', is written over a horizontal line.

NORMAN MOORE MLC
MINISTER FOR MINES AND PETROLEUM

30 APR 2012

PUBLIC

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STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

TRANSPARENCY

1. **Are annual environmental and monitoring reports and inspection reports publicly available?**

At present, the annual environmental and monitoring reports and inspection reports are not publicly available. The Department of Mines and Petroleum (DMP) is undertaking, as one of its many transparency improvement measures, changes to make these reports publicly available. This process has already commenced with developing the necessary systems for making annual environmental reports publicly available. This is expected to be in place in this calendar year.

2. **Is it correct that annual environmental and monitoring reports and inspection reports are deemed commercial in confidence? If yes, please explain why.**

No. Annual environmental reports and inspection reports are not commercial in confidence by their nature. These reports are prepared by the mine operators and submitted to DMP each year for its assessment. These reports address key environment matters to be managed as stated in DMP's conditions of approval and may contain information affected by commercial-in-confidence and intellectual property rights. For similar reasons, DMP's inspection reports can contain commercial-in-confidence information and information affected by intellectual property rights.

It is DMP's intention to make reports available for public information, as stated in its Strategic Paper on Transparency in Environmental Regulatory Decision Making, which is available on its webpage. This strategy paper states "...DMP requires operators and tenure holders to provide reports such as annual performance reports and monitoring reports. DMP is progressing towards making publicly available reports that are required by DMP as a result of statutory obligations or requirements of condition of authorisation. The processes, timing and nature of reports released by DMP will be determined through consultation with industry, taking into account the criteria detailed in this strategy. **Annual reports from tenement holders published by DMP would not include commercially sensitive or confidential material...**" [my emphasis]. DMP is implementing changes so that as far as practicable, commercially sensitive information or confidential material is not included in these reports (without compromising the integrity of the reports). In this way, DMP will be confident in being able to make these reports publicly available within the confidential information control obligations with which DMP must adhere.

3. **What, if any, information does the Department make publicly available that enables an assessment of:**

- **compliance with conditions for current mine sites; and**
- **the current environmental condition of closed mines.**

All approved mining proposals lodged with DMP after 10 February 2006 are being made publicly available on the website through DMP's MINEDEX query system. This process is also being mirrored for approved Mine Closure Plans.

DMP is also subject to the provisions of the *Freedom of Information Act 1992*, and any application under that process is assessed in accordance with the provisions of that Act.

4. **The Auditor General's 2011 report, Ensuring Compliance with Conditions on Mining (OAG report), recommended that the Department should collect, analyse and report information on all non-compliance. Will this recommendation be adopted in full by the Department, and if so, when will it become operational? If no, please explain why not.**

DMP accepts this recommendation, and acknowledges that locating information and documentation relating to environmental performance for the industry was challenging (at the time of the audit) for those unfamiliar with DMP's records management system. DMP has already progressed a number of initiatives to improve the level of reporting, with the focus on individual site performance, and include the following actions:

- In 2008, DMP initiated the development of an electronic system to collect and analyse information in relation to assessments and reporting requirements. In 2009, DMP also implemented its environmental data management system - the Environmental Assessment and Regulatory System (EARS) that records assessment and approvals information. In 2010, DMP then commenced work to extend EARS to include a "Post Approvals Compliance Monitoring" (PACM) module. The new module is expected to be operational in 2012 and will improve the accessibility of compliance data and DMP's analytical capability. This will be used to analyse and demonstrate the effectiveness of its inspections.
- In October 2011, the publication of the specific strategy paper on "Transparency in Environmental Regulatory Decision Making" also forecast DMP's intention to publish environmental performance data.
- Further, DMP has also completed substantial information technology changes to improve the data linkages between the agency's various regulatory databases and strengthen the interrogation functionality. This has been particularly focused on the interaction between DMP's records management system and the Environmental Assessment Regulatory System (EARS).

The combination of the implementation of these various initiatives will deliver the recommendation provided by the OAG.

MONITORING AND ENFORCEMENT

5. **The OAG report found that annual environmental reporting was not effectively managed and the Department's inspection regime was lacking. Please provide details of action taken by the Department to address these concerns.**

The requirement for an effective and robust compliance system is recognised by DMP as being critical for maintaining community, industry and government confidence in the regulation of mining. The Auditor General recognised in his report that the compliance monitoring and reporting system used by DMP had meant that no serious environmental harm had occurred which had not been responded to, however there were areas that could be further improved.

The key approach that DMP is pursuing is a risk-based approach to regulatory effort to ensure that the resources of Government are focused on those areas of potentially unacceptable environmental risks.

DMP has been working to implement these risk based approaches to its monitoring and compliance functions over the last few years. Collectively, the complete implementation of these measures will address the recommendations of the Auditor General:

- *Determining the base level of compliance inspections required to provide adequate assurance of industry compliance.* This is expected to be completed by mid 2012.
- *Applying a risk based approach to ensure that annual environmental reports are reviewed as required.* DMP is modifying its processes for receiving annual environmental reviews so that proponents will be required to identify to DMP any known non-compliance at the site. In this way, DMP will review those reports specifically and take appropriate action, and use a risk-based approach to audit the remaining annual environmental reviews. In this way, an appropriate level of compliance oversight will occur in an efficient way. This approach is expected to be in place by late 2012.

- *Formalising the review and approvals procedures for inspection reporting to address the comments made by the Auditor General.* This includes additional training for officers, and expanding regular internal audits to monitor adherence to approved administrative procedures.
- *Finalise the risk assessment processes for inspection planning.* As acknowledged by the Auditor General, DMP has been formally trialling risk based assessment models for inspection planning and application assessment since 2010. These trials have been necessary to ensure that the methodology is practical and ensure the appropriate level of compliance oversight. In late 2011, this trial was substantially completed, with DMP committing to the implementation of a comprehensive, formalised risk assessment methodology across DMP's entire environmental regulatory role. The development of this methodology has been resourced with dedicated senior expertise from within DMP being assigned to the task. Full implementation of the overarching risk assessment methodology is expected to be completed by late 2012.

6. The OAG report found weaknesses in the Department's information management which impacted negatively on the analysis and reporting of information. Please provide details of action taken by the Department to address these concerns.

As highlighted in answer to Question 4, DMP acknowledges that locating information and documentation relating to environmental performance for the industry was challenging (at the time of the audit) for those unfamiliar with DMP's records management system.

The continued reform and enhancement of DMP's records management system and the Environmental Assessment and Regulatory System discussed above, will address these concerns.

7. The OAG report identified weaknesses in the Department's approach to compliance, including poor monitoring of whether remedial action is taken by operators to address instances of noncompliance. Please provide details of action taken by the Department to address these concerns.

Providing context to these concerns, the Auditor General also stated in his report that:

- "DMP's approach to environmental enforcement is appropriate and potentially successful" [page 29: Audit report]
- "The change [meaning the recent introduction of Mine Closure Plan guidelines by DMP] will formalise better practice across the industry." [page 33: Audit report]
- "Our sample testing showed that all required bonds had been lodged. We also found that bond amounts were regularly reviewed." [page 33: Audit report]
- "We found no cases of significant environmental harm that had occurred without DMP's knowledge." [page 24: Audit report].

Nevertheless, by addressing the potential weaknesses identified by the Auditor General, the regulatory system administered by DMP will continue to improve. The specific concerns relating to monitoring of noncompliance will be addressed through extending the EARS system to include a "Post Approvals Compliance Monitoring" (PACM) module (as described in the answer to question 4).

8. The OAG report recommended that issues relating to monitoring and enforcement of conditions on State Agreement Act projects should be resolved. Has this occurred? If not, what if any, progress has been made?

DMP and the Department of State Development have commenced a review of environmental compliance monitoring and enforcement policies and practices for State Agreement projects. The agencies are in the process of formalising the operational arrangements to ensure there are consistent standards of approval conditions, monitoring, and compliance, across both State Agreement Act and non-State Agreement Act projects. These two departments expect this review to be completed and new arrangements in place by mid 2012.

9. **The OAG report noted that mines which do not operate under the Mining Act will not be required to be the subject of the new requirement of Mine Closure Plans. How many mines fall within this category?**

There are several types of mining in Western Australia that operate outside the jurisdiction of the *Mining Act 1978*. These include those that operate under State Agreements, those operating under the "minerals to owner" provisions in land titles and those operations such as quarries on freehold land which operate under other statutes such as those used by local government authorities. DMP does not maintain records of the operational status of activities that are outside the Mining Act jurisdiction.

10. **How will the Government ensure that such mines are adequately rehabilitated upon their closure?**

State Agreement, "minerals to owner" and other mining activities require approvals under relevant legislation including the *Environmental Protection Act 1986* where appropriate. The recent Mine Closure Plan Guidelines were jointly published by DMP and the Environmental Protection Authority. Although these mines are outside DMP's regulatory role, DMP makes available to the relevant agencies and local government authorities its guidance for mining approvals.

11. **The OAG report noted that the Department was to finalise a policy to guide good practice in managing the 11,000-plus abandoned mines in this State. Has this policy been finalised, and if so, please provide the Committee with a copy.**

The policy has not been finalised. An initial draft policy for the management of abandoned mines in Western Australia has been prepared, and DMP is currently consulting with the Departments of Environment and Conservation and Regional Development and Lands on this initial draft. It is proposed that a draft policy paper for public comment will be released towards the end of 2012.

REVIEW OF MINING SECURITIES FRAMEWORK

12. **Your letter indicated that you would be receiving the final results and recommendations from the review in January 2012. Please advise the Committee of the results and recommendations and the Government's preferred mining securities model. Will State Agreement mine operators be included in the preferred model?**

I have received in recent weeks from DMP the final results of the review. As the Government is yet to formally consider these findings I am not able to provide you a detailed response at this time. However I am confident that the consideration of these matters will occur in a timely way, and that an announcement will be made accordingly.