Integrated Mining Policy:

Independent Audits, Annual Review and Web Based Reporting Framework

Submission

NSW MINERALS COUNCIL

September 2015

Executive summary

The NSW Minerals Council (NSWMC) welcomes the opportunity to comment on the draft *Integrated Mining Policy* documents. This submission provides advice in relation to the draft Post-Approval Guidelines:

- *Annual Review*
- *Independent Audits*
- *Web Based Reporting Framework*

The NSW Government's initiative to establish a clear policy framework for the regulation of mining is commendable. A streamlined reporting mechanism would assist proponents to more efficiently meet their reporting obligations, whilst at the same time ensuring that the information needed by regulators is readily available. While the intent of each document is sound, in their current form the documents each require review to ensure they are effective, appropriate and workable. Each of the three draft guidelines is addressed individually below.

Annual Review

The intent of the *Annual Review* is sound in that it seeks to consolidate reporting requirements and provide a level of consistency and streamlining. However there exists a significant duplication with the web based reporting framework requirements and some existing reporting obligations. These duplicative elements should be removed.

The approach of requiring a 'statement of compliance' is unnecessary and creates legal risks – assessment of compliance is best managed through independent audits.

Independent Audits

The draft *Independent Audit* guideline consolidates a range of existing audit requirements and adds some new conditions. The key concerns with the *Independent Audit* document are:

- The current audit requirements still reflect a 'box-ticking' approach. A risk-based approach to identifying priority issues for an individual audit would streamline the requirements.
- The risk assessment matrix should use standard risk assessment terminology, and its impacts and likelihoods require definition to minimise subjectivity.
- There are potential inconsistencies between the guideline and the conditions placed on an operator's approval.

Web Based Reporting Framework

Whilst the overall intent of the draft framework is laudable, namely facilitating streamlined and consistent provision of information via website, the framework is not consistent with expressed government policy of reducing regulatory red tape and administrative burdens on business.

Web based reporting is a resource intensive and costly exercise. The requirements outlined within the draft framework could in some cases require a complete overhaul of an existing website. It would

result in a significantly increased workload and cost, with some increase in ongoing workload required to service the expanded content. NSWMC estimates that implementing the web based reporting requirements would cost the NSW mining industry approximately $1.0-1.4 million to establish and $600,000 - $700,000 per annum to maintain.[1] Due to the significant costs, the framework's requirements should not be applied retrospectively to existing operations.

The key concerns with the Web Reporting Framework document are:

- It is not clear whether the framework is intended as a mandatory or voluntary requirement for existing operations. It should be made clear that it does not apply to existing operations.
- The draft framework unnecessarily expands the scope and volume of material that must be included on the mine website.
- A level of duplication is evident between the website requirements, the Annual Review and existing agency specific reporting requirements.
- Requiring water licences to be provided is not necessary and does not streamline reporting requirements.
- Providing an Incident Register is unnecessarily duplicative as these are provided in monthly reports or in Annual Environmental Management Reports.
- There is an excessive level of detail required for the Community Complaints Register that creates inefficient reporting requirements.
- There are potential inconsistencies between the guideline and the conditions placed on an operator's approval.

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[1] Assuming a $15,000-20,000 set up cost per mine site, across 70 mines in NSW; ongoing annual web hosting costs of $2,500 per mine, as well as an additional 1 person day per month on a $120,000-$150,000 annual salary, across 70 mines in NSW.

About the NSW Minerals Council

The NSW Minerals Council (NSWMC) is the peak industry association representing the NSW minerals industry. Our membership includes around 100 members, ranging from junior exploration companies to international mining companies, as well as associated service providers.

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Introduction

The minerals industry supports environmental regulation that is both efficient in its operation and effective in achieving the desired outcomes. In this submission, the industry does not seek to remove or diminish environmental standards or safeguards. Rather, the minerals industry seeks only to create a more streamlined process in meeting environmental outcomes through the removal of unnecessary and costly duplication. Duplication of robust regulatory processes does not improve environmental outcomes. In fact, duplication, particularly in environmental assessments and approvals, can draw resources away from compliance, enforcement and remediation functions, which could otherwise go to improving environmental outcomes or improving public confidence in the regulatory system.

Each of the draft guidelines is dealt with separately below.

Annual Review

The intent of the Annual Review is sound in that it seeks to consolidate reporting requirements and provide a level of consistency and streamlining. However there exists significant duplication with the web based reporting framework and some existing reporting obligations.

Set out below are the main concerns that NSWMC has with the draft guideline.

There is significant duplication between the Annual Review, the web based reporting framework and other individual agency reporting obligations

Industry supports the use of a well-designed, well-targeted Annual Review document. An annual reporting document can be used to meet a wide range of reporting obligations, thereby negating the need for multiple separate reports.

The Annual Review performs a similar task to the Annual Return that is currently required under the EPL. This is to some extent a duplication of effort. Ideally annual reporting should be consolidated into a single document that satisfies the needs of all regulators.

The Annual Review should also only include information that is not routinely made available throughout the year online.

If there is to be a shared commitment to boosting productivity by government and industry, then regulatory agencies need to better coordinate their efforts and requests. Regulators need to critically examine the information that is being required to be published on mine websites and determine what information by exception they require in an Annual Review format. The guiding principle should be that information is provided *once* in a format that meets the needs of regulators.

Example of duplication

The independent audit guideline requires that the action plan be placed on the website. The web based reporting guideline then states that the action plan must be update annually. The Annual Review then requires that the compliance status to be updated annually and the progress against the action plan updated.

Example of duplication (continued)

These guidelines need to be better linked to prevent duplication. The following could be placed in all of the guidelines, providing the same outcomes, but preventing duplication:

- Independent Audit and action plan is to be placed on the website.
- Action plan status to be reviewed annually through the Annual Review process.
- The Annual Review to be placed on the website – providing the community/regulators with access to the progress of the action plan.

Requiring a statement of compliance creates unnecessary legal issues

For an operation to swear on the compliance of its (potentially 2,000 or more) conditions of consent is a significant undertaking that invites potential legal challenges. These complex and very detailed compliance related assessments are best undertaken by auditors who specialise in in-depth regulatory analysis in order to critically and independently analyse performance against compliance requirements.

There are currently provisions within the POEO Act and site approvals issued by DPE that require proponents to immediately notify the Secretary and any other relevant agencies of any incident. Within seven days of the date of the incident, the Proponent must provide the Secretary and any relevant agencies with a detailed report on the incident, and further reports as may be requested.

An incident is defined as a set of circumstances that:
- Causes or threatens to cause material harm to the environment; and/or
- Breaches or exceeds the limits or performance measures/criteria in the approval

The statement of compliance is therefore best dealt with through independent audits.

The Annual Review could still report on the previous year's confirmed non-compliances that are on the record with a government agency.

Other requirements

More detailed commentary relating to the *Annual Review Requirements* document is provided in Annexure A.

Recommendations

- NSWMC recommends that the regulatory agencies re-examine what information is critical to them, and ensure that the Annual Review does not duplicate web reporting and other agency requirements.
- Remove statement of compliance requirements from Annual Review and allow compliance with conditions to be assessed by independent auditors. The Annual Review could be used to report the previous year's confirmed non-compliances that are on the record with a relevant government agency.

Independent Audits

The draft guideline consolidates a range of existing audit requirements and adds some new conditions. In principle the guideline is useful in that it provides a degree of uniformity and consistency that should ultimately help streamline and tailor the audit process to achieve better outcomes.

The principal concerns industry has with the guideline in its current form are summarised below.

The scope of the Independent Audit should be limited

Independent Audits are expensive and time consuming, and in the current requirements are not streamlined. A risk-based approach to identifying priority issues for an individual audit would streamline the requirements.

The risk analysis matrix requires improved language and definition

The use of wording such as 'code red' etc. can be easily misconstrued and is inappropriate for risk assessments. Standard risk terminology such as 'critical', 'high', 'moderate' and 'low' is less emotive and more appropriate for risk assessments.

The risk definitions are currently highly subjective and there are differing views on the materiality of a given issue. The risk rating system must therefore be tightly defined. Definitions are required for what constitutes a 'high', 'moderate' or 'low' environmental impact. Similarly 'certain', 'likely' and 'less likely' likelihoods should be defined. Instead of 'less likely', wording such as 'possible', 'unlikely' and 'rare' is a more standardised terminology for risk criteria. Ideally, the risk categories and definitions within the Annual Review and the Independent Audit should be aligned.

To improve clarity, the 'likelihood' heading of Table 2 should be redefined as the "likelihood of environmental harm occurring (for non-compliances)" or similar.

Other comments

Specific comments relating to the *Independent Audits* document are provided in Annexure A.

Recommendations

- NSWMC recommends that a risk-based approach be taken for the Independent Audit to allow the audit to focus on higher risk issues.
- NSWMC recommends that the risk assessment process be better defined and use more appropriate and standardised risk terminology.

Web Based Reporting Framework

Whilst the overall intent of the draft Web Based Reporting Framework is laudable, namely facilitating streamlined and consistent provision of information via websites, the framework is not consistent with expressed government policy of reducing regulatory red tape and administrative burdens on business. Implementing the draft framework in its current form would result in significant duplication between the website requirements, the Annual Review and existing agency specific reporting requirements. DPE should facilitate a whole-of-government approach to reducing duplicative reporting requirements.

Web reporting is a resource intensive and costly exercise. The requirements outlined within the draft framework are overly prescriptive and could in some cases require a complete overhaul of an existing website. It would result in a significantly increased workload and cost, with some increase in ongoing workload required to service the expanded content. NSWMC estimates that implementing the web based reporting requirements would cost the NSW mining industry approximately $1.0-1.4 million to establish and $600,000 - $700,000 per annum to maintain.[2] Due to the significant costs, and since there are potential inconsistencies between the guideline and the conditions placed on an operator's approval, the framework's requirements should not be applied retrospectively to existing operations.

The principal concerns with the draft framework are summarised below.

It is unclear whether the framework is mandatory for existing operations

It is unclear whether the draft framework is a mandatory or voluntary requirement for current operations. The guideline states that mining operations are "encouraged" to publish information on a website, and that information "should include" certain information. This wording implies that it is voluntary, but this should be made explicit. This will ensure that the framework's suggestions are not applied retrospectively to existing operations.

The draft framework unnecessarily expands the scope and volume of material that must be included on the mine website

The clear overall trend evident in the draft framework is toward more information being required to be made available on the website, both in terms of documents, data and commentary. Whilst it is understood that this has been a trend across government for some time, it should be acknowledged that this would pose increased administrative burdens on mining operators.

As a general principle, a web page should be used to provide summary information only and direct a web user to where more specific information can be found.

The draft framework also requires links to annual returns and government websites. These will be new requirements for most companies. It should be noted that the draft framework is potentially inconsistent with existing development consents, since it requires information to be posted online by operators that is not required to be kept and/or published by the development consent. Generally, the operator's web reporting requirements should be limited to what is required in their existing conditions.

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[2] Assuming a $15,000-20,000 set up cost per mine site, across 70 mines in NSW; ongoing annual web hosting costs of $2,500 per mine, as well as an additional 1 person day per month on a $120,000-$150,000 annual salary, across 70 mines in NSW.

A level of duplication is evident between the web based reporting framework, the annual review and existing agency reporting requirements

The framework is overly prescriptive which in turn drives duplication. In some cases the data required by the government could already exist on an operator's website (within a report), however the framework would require this data to be extracted, put into a different context or format and compartmentalised under a separate heading.

Ideally there should be just one set of data required by government that meets the various agency reporting requirements. Unfortunately there is no indication in the framework that inclusion of additional information on the website will lead to a corresponding reduction in agency specific reporting requirements.

The relationship between the Annual Review and the web based reporting regime needs to be closely examined with a view to eliminating duplication to the furthest extent possible.

Other comments

Other specific comments relating to the Web Based Reporting Framework document are provided in Annexure A.

Recommendations

- NSWMC recommends that the guideline include explicit note that the guideline is voluntary (unless there is a condition of consent that it is required to be applied in accordance with the framework) so that it is not applied retrospectively to existing operations.
- NSWMC recommends that the scope and volume of material required on a company website be significantly refined.
- NSWMC recommends that DPE clarify what information is critical for inclusion in the Annual Review and Web Based Reporting, and ensure that the requirements are not duplicative.

Annexure A – Specific requirements relating to policy documents

Annual Review Requirements

Section	Reference	Comment
Length	Page 3	Prescribing the length of document will push much of the body to appendices. The 50-page limit may not be achievable for large mines. DPE should possibly test how an existing large report could be turned into a 50-page report.
1 Statement of compliance	Risk assessment key for Table 3	'Likely' and 'unlikely' require definition. 'Significant', 'serious', 'moderate' and 'low' environmental consequences also require definition.
2 Introduction	2nd dot point	Showing changes to land ownership is unnecessary, particularly where it so insignificant that it may not be visible on a map.
6 Environmental Performance		Monthly reports already provide this information. Is the intent to summate the information over an annual period?
6 Environmental Performance	Page 8 – 2nd dot point	If monitoring data is inconsistent with EIS predictions, will that result in a non-compliance? It should not.
8 Rehabilitation performance	3rd dot point	This is duplicative as these issues are covered in a Mining Operations Plan.
8 Rehabilitation performance	Table 7	The table should be able to relate to either Table 6 or 7 of the ESG3: Mining Operations Plan (MOP) Guidelines (2013).
8 Rehabilitation performance	Table 7 and accompanying notes	Accounting for temporary stabilised areas as active disturbance isn't entirely accurate. Companies should be credited for reducing exposed areas with temporary rehabilitation. Another indicator should be used to specify temporary rehabilitation. Note also that EPA monitors actual as opposed to forecast disturbance in the context of the risk for air emissions.
9 Community	Dot point 2.	The term 'community fund' requires definition.
9 Community	Dot point 3.	These are already reported in monthly reports. Is the intent to summate the information over an annual period?
9 Community	Dot point 4.	Complaints can be vexatious or made by serial complainants with no legitimate basis to create the impression of poor performance.
10 Independent audit	Dot point 2.	This is unnecessary duplication as the audit report should already be on the website.

Section	Reference	Comment
11 Incidents and non-compliances during the reporting period	Dot point 1.	Should this be 'reportable incidents' rather than 'relevant approval conditions'?
11 Incidents and non-compliances during the reporting period	Dot points 6 and 7	Technical non-compliances would not require any actions.
11 Incidents and non-compliances during the reporting period	Page 11 - 4th dot point on page	Is there an expectation to respond to these? These are typically received as a result of an incident report in which case the actions are included in the incident report. Potentially unnecessary duplication.
11 Incidents and non-compliances during the reporting period	Page 11 - 5th dot point on page	This is superfluous. Any actions are included in incident reports for the respective non-compliances.
11 Incidents and non-compliances during the reporting period		The web based reporting framework requires information to be placed on a website relating to incidents, so providing it again in this context amounts to a level of duplication. It should be removed from either the website requirements or the annual review.

Reporting on incidents of non-compliance should be limited to circumstances where the non-compliance has actually been proved has been closed off. |
| 12 Activities to be completed in the next reporting period | | Some duplication from previous sections as some of the other sections require what is proposed or future management actions and then these are reiterated in this section. |
| 12 Activities to be completed in the next reporting period | Last dot point | Any 'action' or any 'condition'? |

Independent Audits

Section	Reference	Comment
2.1 Audit objectives	Last paragraph	The example of a 'serious safety incident' incorrectly implies that the audit will include safety aspects.
2.1 Audit objectives	Last paragraph	If an individual audit has specific objectives relating to its trigger, then these objectives will need to be communicated to the site in the form of a formal letter or request from the department.
2.2 Audit scope	First sentence	The audit scope should be as per the requirements of the development consent / project approval, not as 'determined by the lead regulator', unless it is a result of a trigger as per the requirements under 2.1.
2.3 Audit criteria	Paragraph 4	This sentence should make it clear that consultation with regulators is the responsibility of the auditor.
2.3 Audit criteria	Dot point 4	There should be some qualification here to ensure that it is the relevant documentation that is audited. EIS content may be amended by way of a preferred project report, response to submissions; statement of commitments may be amended so the consent version is the only version that should be audited.
2.3 Audit criteria	Dot point 5	The requirements are not entirely clear and potentially inconsistent with the audit requirements of the development consent / project approvals.
3 Selection and approval of audit team	First sentence	As it is the lead regulators responsibility to determine the scope of the audit, there needs to be a timeframe for the department to provide companies with the approved scope to determine how early the site will need to start the process in order to commission the auditors by the required timeframes within their development consent / project approval.
4.1 Compliance assessment criteria	Table 1 – 'verifiable evidence'	The term 'sufficient verifiable evidence' should be defined, to clarify that it is not based on the auditor's opinion. It would be beneficial if DPE could provide further definition surrounding conditions that state that a requirement will be carried out to the 'satisfaction' of the Department in situations where documentation is not required to be supplied to the Department (for example, the condition that "The Proponent shall minimise the amount of waste generated by the project to the satisfaction of the Director-General"). What verifiable evidence would be required to provide compliance with this type of condition?
4.1 Compliance assessment criteria	Table 1 – Observation	Observation should not relate to "areas where performance may be improved". Compliance of the site (i.e. only potential non-compliances) should be what matters, not an auditor's personal preferences or how an auditor believes site should be managed.

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Section	Reference	Comment
4.2 Agency and community consultation		As the lead regulator consults with the agencies during the scoping process, the scope should address the specific issues the agencies have. It is not clear why the agencies would need to be again consulted by the auditor.
4.2 Agency and community consultation	Dot point 6.	Local councils should only be consulted if they are a consent authority.
4.3 Site interviews and inspections	Last paragraph	Some guidance would be useful on the level of detail necessary for this section. Detailed discussion should not be required unless it relates to the substantiation of a finding.
5.3 Audit report distribution		The report's distribution needs to be consistent with the project approval / development consent conditions.
5.1 Audit findings	Audit findings - 8th sub-point.	For sites that are ISO14001 compliant, their environmental management system (EMS) would already be subject to independent audit, and therefore there is no need to audit these sites' EMS on a more regular basis, particularly if one had been completed relatively recently. Auditors could instead refer to the results of the most recent ISO14001 audit.
6 Action Plan	1st paragraph	This section states that a response should be provided within *four* weeks. Some operators have requirements in their project approvals that action plans have a longer time period for submission, e.g. six weeks. Therefore there is potential inconsistency between the requirements. Suggest that this issue be alleviated by inserting words along the following lines, near the start of the document: *'If there is any inconsistency between this guideline and the conditions placed on an operator's approval, the conditions will prevail.'*

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Web Based Reporting Framework

Section	Reference	Comment
1 General	Footnote on page 2	Does 'finalised' mean: 1. Approved by the relevant government agency as required under an approval; or, 2. A final document being submitted to an agency for approval? Option 1 is preferred.
2 About the operation		The "about us" requirements include information (such as details of plans, operational hours, production levels, stage of operations, employee numbers, maps) that is already available in the DA, EIS and Annual Review – all of which are publicly available. Perhaps a link to these documents for this type of information would suffice.
3 Contact details	Dot point 5.	The need for this is not clear. Instead of providing contact details of relevant government regulators, it would be beneficial for companies to be able to link to a government site that contains all the relevant government mine regulators.
4 Approvals register		It would be useful if this section provided guidance on whether there are legislative requirements to have the following approvals on a website: • Environment Protection Licences. • Subsidence Management Plans or Extraction Plans (when not through a development consent). • Mining Operations Plans or Rehabilitation Management Plans (when not a requirement of a development consent). • Water licences and other approvals under the Water Act and Water Management Act.
4 Approvals register	Dot point 3	Does this include all Consolidated Coal Leases, Mining Leases, and Mining Purposes Leases, etc.?
4 Approvals register	Dot point 6	A large operation may have dozens or even in excess of a hundred water licences, so this does not streamline requirements. There are established mechanisms for conducting water licence searches that involving paying a fee. Whilst making reference to a water licence number might be acceptable, those wishing to access a water licence should have to follow the existing processes for commercially valuable information.
6 Monitoring data		The requirement to present data in a "meaningful way" or "meaningful summary" goes beyond what is currently required and effectively duplicates what is required by the Annual

Section	Reference	Comment
		Review. Further, any monitoring data that is uploaded to the web should only be presented once in one report rather than separate reports to meet the needs of EPA and DPE.
7 Compliance	Compliance reports – dot point 1.	It's not clear whether this should include incident reports.
7 Compliance	Compliance reports – dot point 2.	An example of transport records would be beneficial.
7 Compliance	Compliance reports – dot point 4.	It would be beneficial to include guidance on the types of reports that are relevant.
7 Compliance	Incident register	Providing a register of incidents is unnecessarily duplicative as these are provided in monthly reports or in Annual Environmental Management Reports. Suggest that a link to these documents would suffice. The framework should provide guidance on whether the incident register should report: • Only environmental non-compliances. • Incidents that triggered the requirement to report due to environmental harm. Should the incident register include safety incidents?
8 Community	Community consultative committee	There should be some discretion as to what presentations in CCC meetings are uploaded to the website.
8 Community	Community complaints register	There is an excessive level of detail that creates inefficient reporting requirements. A complainant ID and brief explanation is particularly unnecessary. The time and date should suffice, with a link to the Annual Review where the details can be provided.
8 Community	Blasting Notifications	Blasting information changes constantly reflecting meteorological and operational factors so maintaining a *blast schedule* could be extremely onerous unless a very general timeframe is used – e.g. 9am-5pm. Instead of '*where blasting operations are undertaken*' it should read "*where blasting notifications are required by consent or licence*". Operations should only be required to provide blasting schedules online or any additional information where it is required by licence or consent.