



NORTHERN
TERRITORY
DIVISION

27 July 2022

Mr Paul Purdon,
Executive Director Environmental Assessment and Policy
Department of Environment, Parks and Water Security
GPO Box 3675 Darwin NT 0801
By email: paul.purdon@nt.gov.au

Re: Draft for Consultation – Environmental Factor Guidance: Atmospheric processes – Greenhouse Gas Emissions

Dear Mr Purdon,

The MCA supports action on climate change. The mining industry acknowledges that sustained global action is required to reduce the risks of human-induced climate change, and the sector supports a measured transition to a low emissions global economy.

In July 2020, the Northern Territory Government released its climate change response policy framework, *Northern Territory Climate Change Response: Towards 2050*, establishing the objectives and policy pathways for the Territory 'to achieve net zero emissions, build resilience to the impacts of a changing climate and grasp the opportunities of a transition to a low carbon future.'¹ The MCA was encouraged that this document committed the Territory Government to working 'with the Australian Government and other Australian jurisdictions to ensure complementary action on emissions reduction and remove any barriers from inconsistent legislative or policy approaches' (p 10).

Key concerns

Proposed divergence from national regulation of emissions

Unfortunately, the NT EPA's consultation document, *Environmental Factor Guidance: Atmospheric processes – Greenhouse Gas Emissions* ('The Guidance Document') is not consistent with the National Safeguard Mechanism (SGM), in particular with inclusion of estimating, monitoring and reporting on Scope 3 emissions. This is a critical flaw that the MCA has pointed out in our submissions on two greenhouse gas emission policies released by the Northern Territory in 2021:

- Greenhouse Gas Emissions Management for New and Expanding Large Emitters (the 'Large Emitters Policy'); and

¹ <https://climatechange.nt.gov.au/nt-climate-change-response/northern-territory-climate-change-response-towards-2050>

- Greenhouse Gas Emissions Offsets Policy ('Offsets Policy').

The SGM covers industrial emissions and the NT EPA does not need to, nor should it, impose an inconsistent regulatory framework in relation to these emissions, as they are already subject to federal SGM regulations.

Australia is the signatory to the Paris Agreement and is the jurisdiction responsible for meeting national emissions targets – not the Northern Territory. The NT EPA (and Territory Government) should recognise that having a national emissions target offers a significant opportunity for economic development in the Territory in allowing more than recommended or 'guideline' thresholds (a term highlighted by the NT EPA many times in the Guidance Document) if other Australian jurisdictions are producing less.

Unnecessarily constraining Territory emissions outside of national targets may have negative consequences for economic activity in the Northern Territory and lead to carbon leakage for no net environmental benefit.

Proposed discretionary divergence by the NT EPA from Territory Government emission thresholds

The Territory's Environment Protection Act ('EP Act') requires proponents to refer for NT EPA assessment any proposed action with a potential for significant and unacceptable environmental impact (Section 42(b)).

Through its 2021 Large Emitters Policy, the Government adopted an industrial project threshold of 100 000 tCO₂-e in any financial year over the cycle of a project (a value chosen to be consistent with the SGM), above which a proponent must refer their project for environmental impact assessment (EIA) by the NT EPA.

Thresholds such as this are intended to provide clarity, consistency and certainty for all parties: proponents, government regulators, investors and the broader community.

In the Guidance Document, however, the NT EPA has included extensive verbiage to justify why it does not have to recognise the government's significance threshold and maintains its discretion to call-in a proposed action that has emissions below the 'guiding thresholds,' i.e. to call in projects that do not meet or exceed the government-endorsed significance criterion, including

- 'It is the NT EPA who decides whether assessment is required or not, and this cannot be directed by government policy... and 'maintains discretion in its determination of significance.'
- 'The NT EPA may decide to call-in a proposed action that has emissions below the guiding thresholds.'

By including this proposed discretionary use of government-adopted significance thresholds, the NT EPA would be introducing an unacceptable level of uncertainty for proponents and investors, which, in addition to being inconsistent with the Government's Climate Change Response framework, is inconsistent with the final report of the Territory Economic Reconstruction Commission final report (December 2020), that urges the government to reduce investor uncertainty through a risk-based and consistent regulatory framework (p 11).

This uncertainty is exacerbated through another statement in the Guidance Document that suggests proponents refer their projects if their emissions are close-to but below the threshold.

In addition to the uncertainty explicit in the NT EPA's statements above, the inclusion of two full pages (out of 12) of verbose 'supporting information' (Section 5 – the NT emissions profile; and Section 6 – the NT EPA's considerations) buries the key practical information that a guidance document is intended to deliver, making it harder for the target user to locate and follow. If the NT EPA is intent on including this lengthy justification for disregarding the thresholds, then this material should be moved to a separate appendix at the end of the Guidance document.

Other comments

Section 5 – application of the guideline

The first sentence under this heading refers to ‘threshold guidelines’ that have not yet been identified in the Guidance Document. As this is critical information to understand guidance information that follows, it is recommended that the explanatory information on the thresholds be moved here from Section 6 below and be properly referenced (i.e. from the Large Emitters Policy)

This section then goes on to state that the action is to be referred to the NT EPA for consideration in accordance with the EP Act but does not specify the relevant section of the Act, which is important information to include in a guidance document.

Proponents are instructed to include a greenhouse gas abatement plan, even if the proposed action does not meet the thresholds included in the document (which are the thresholds in the Large Emitters Policy). The Guidance Document is therefore inconsistent with the Large Emitters Policy.

Section 6 – Referring an action to the NT EPA

The last paragraph indicates that the emissions thresholds are ‘provided as a guide’ to when a referral is required. This is consistent with wording in the Large Emitters Policy:

- ‘Establishing the NT Government’s expectations for new large emitting projects’
- ‘large emitters.. that are required to obtain an environmental authorisation’
- Thresholds ‘align with the Australian Governments SGM’
- ‘thresholds aim to guide decision-making and increase certainty for proponents.’

However, the third paragraph in this section indicates that ‘a proponent **is to refer** a proposed action to the NT EPA if its emissions exceed’ the thresholds.

Section 7.1 Estimated emissions

Given the provision of thresholds only for Scope 1 emissions, the Guidance Document (and Large Emitters Policy prior to this) suggests that only Scope 1 emissions are subject to NT EPA assessment; however, the Guidance Document includes requirements to estimate Scope 2 and 3 emissions; breakdown their source locations, etc. The NT EPA has no jurisdiction over regulation of Scope 3 emissions that occur outside the boundaries of the Northern Territory, and it is problematic and difficult (with significant uncertainties) for a project proponent to determine its Scope 3 emissions and breakdown emission source locations outside the NT and/or Australia.

This section also directs proponents to compare estimated emissions against Northern Territory and Australian greenhouse gas emissions, as reported in Australia’s National Greenhouse Accounts. What is the value in making the proponent compare such emissions to the national inventory when the emissions will be covered by the SGM and subject to the Clean Energy Regulator’s schedule of progressive reduction in emission baselines?

Section 7.2 Emissions management

Australia is the signatory to the Paris Agreement and has national emissions targets – not the Northern Territory.

The SGM covers industrial emissions and the NT EPA does not need to regulate these emissions, as they are covered by federal SGM regulations.

Unnecessarily constraining Territory emissions outside of national targets may have negative consequences for Territory economic activity and lead to carbon leakage for no net environmental benefit.

Section 7.3 Greenhouse Gas Abatement Plan

Scope 2 emissions are usually outside the direct control of the proponent, as these are emissions from the electricity supplier's Scope 1 emissions. The electricity supplier is responsible for their Scope 1 emissions and should be responsible for decarbonisation of those emissions.

The MCA NT is available to further discuss the development of this policy at any time. For clarification or further details, please contact me on 0401 222 941 or Cathryn.tilmouth@minerals.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Tilmouth', followed by a period.

Cathryn Tilmouth
Executive Director Northern Australia