Preparing for Exploration

Changes to the Regulation of the Northern Territory’s Onshore Petroleum Industry

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The Northern Territory Government is implementing changes to regulation of the onshore petroleum industry to protect the environment, ensure accountable industry practice and provide transparency and clarity in the decision making process.

Development of the Territory’s onshore petroleum industry has the potential to generate significant investment in the local economy and create many job opportunities, especially in regional centres. The Territory Government is encouraging development of this industry while maintaining the health of the Territory’s natural systems and ecological processes.

Strengthening regulation and protecting water and the environment are key reform areas of the 135 recommendations of the Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (the Inquiry).

Changes have been made to implement the recommendations the Inquiry determined must be completed before any onshore petroleum exploration activity occurred involving drilling or hydraulic fracturing of unconventional gas reservoirs in Northern Territory.

Additional reforms will occur as the remaining Inquiry recommendations are implemented.

Further Information

For further information on the implementation of the recommendations from the Inquiry or to register for regular updates visit: hydraulicfracturing.nt.gov.au, email hydraulic.fracturing@nt.gov.au or phone +61 8 8999 6573.

Department of Environment and Natural Resources

Department of Primary Industry and Resources
nt.gov.au/industry/mining-and-petroleum

Northern Territory Environment Protection Authority
ntepa.nt.gov.au
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Changes to Strengthen Environmental Regulation

The Northern Territory Government has made important changes to legislation to strengthen the regulation of environmental management of the onshore petroleum industry. Stronger laws will ensure that the Territory’s onshore petroleum industry develops with consideration of ecological and environmental values as well as lifestyles, cultures and existing jobs and industries.

This booklet focuses on the important changes made to environmental assessment, management, approval, and decision review processes for onshore petroleum activities.

Key changes included are:

- The NT Minister for Environment and Natural Resources is now responsible for the regulation of environmental management of the onshore petroleum industry
- Water use for onshore petroleum industry activities is now regulated through the Water Act 1992 and with specific requirements for petroleum activities
- A legally enforceable Code of Practice clearly defines standards and requirements of the petroleum industry operations
- Publication of draft Environment Management Plans (EMP) for public comment for the drilling of petroleum wells and hydraulic fracturing prior to consideration by the Minister.

There are also important changes to laws to increase the transparency around decision making. These and other regulatory changes are essential to ensure the Territory has a robust and trusted regulatory framework which enables the onshore petroleum industry to develop in a manner that protects the environment, and provides certainty to industry and the community.

New Environmental and Water Use Decision Makers

A significant recommendation from the Inquiry was to have a clear separation between the responsibility for regulating the environmental impacts and risks associated with an onshore petroleum industry and the responsibility for promoting that industry.

This separation has occurred by transferring the responsibility for environmental regulation of the onshore petroleum industry to the Minister for Environment and Natural Resources. This new responsibility includes making decisions about EMPs for regulated activities. The Minister for Primary Industry and Resources continues to hold responsibility for all other matters under the Petroleum Act 1984, which include tenure, petroleum resource management, and operational approvals including well operations.

Petroleum companies with granted petroleum interests (such as Exploration Permits or Production Licences) are required to submit an EMP for assessment, and the Minister for Environment and Natural Resources must approve the EMP before any regulated activities can occur. Regulated activities are defined in the Petroleum (Environment) Regulations 2016 as activities which have an environmental impact or environmental risk, and include seismic surveys, drilling of petroleum wells and hydraulic fracturing.

Amendments made to the Water Act 1992 in December 2018 mean that water extraction for petroleum activities is now regulated under this legislative framework. This means petroleum water extraction will be subject to the same considerations as other sectors in the Northern Territory, enabling consistent decisions across industry types within a given water resource.
Petroleum Regulatory Approvals Frameworks

**Tenure, Resource Management, and Operational Approvals**
- Minister for Primary Industry and Resources
- Department of Primary Industry and Resources
- Petroleum Act 1984
  - Tenure
  - Resource Management
  - Operational Approvals
  - Enforceable Code of Practice

**Environmental Approvals**
- Minister for Environment and Natural Resources
- NT Environment Protection Authority
- Petroleum (Environment) Regulations 2016
  - Environment Management Plan
  - Enforceable Code of Practice

**Water Approvals**
- Controller of Water Resources
- Department of Environment and Natural Resources
- Water Act 1992

Advice and/or Recommendation
Changes to the Regulation of the NT Onshore Petroleum Industry

Relevant changes have been made to the Northern Territory Environment Protection Authority Act 2012 to allow for enhanced petroleum environmental regulation, including:

- Two additional members appointed to the Northern Territory Environment Protection Authority (NT EPA) Board with specialist skills and experience in the assessment and management of the environmental impacts of onshore petroleum developments
- Power for the Minister for Environment and Natural Resources to seek NT EPA advice in relation to EMPs prepared under the Petroleum (Environment) Regulations 2016
- A new responsibility of ‘assurance monitor’ to undertake systemic reviews of the Territory’s environmental management systems, including the petroleum environmental regulatory framework.

The Northern Territory Environment Protection Authority (NT EPA)

The NT EPA is an independent authority established under the Northern Territory Environment Protection Authority Act 2012, with responsibility for assessing projects to ensure potential environmental impacts are fully understood and properly managed through:

- Administering the Environmental Assessment Act 1982
- Providing environmental advice to the Minister for Environment and Natural Resources
- Undertaking regulatory role of the Waste Management and Pollution Control Act 1998

The membership of the NT EPA consists of a Chairperson, six members and the Chairperson of the Northern Territory Planning Commission. Current members are:

- Dr Paul Vogel – Chairperson
- Ms Janice van Reyk
- Dr Rod Lukatelich - new member with expertise in the assessment and management of the environmental impacts of onshore gas developments
- Dr Vaughan Beck – new member with expertise in the assessment and management of the environmental impacts of onshore gas developments
- Dr Ian Geoffrey Wallis
- Dr Colin Joseph (Joe) Woodward
- Ms Samantha Nunan
- Dr David Ritchie – Chairperson NT Planning Commission

To enable it to properly exercise its powers and functions, support is provided to the NT EPA by staff and facilities of Department of Environment and Natural Resources.
New Process for the Assessment of Environment Management Plans

A new process has been created for the NT EPA to assess the environment management plans (EMP) for petroleum activities under the Petroleum (Environment) Regulations 2016 and the Environmental Assessment Act 1982 concurrently.

The Minister for Environment and Natural Resources:

- Accepts the EMP
- Considers technical advice, the NT EPA advice, and any public comments received from public consultation on EMP’s for drilling of petroleum wells and/or hydraulic fracturing activities
- Approves or refuses the EMP
- May impose conditions as part of the approval of the EMP
- Prepares decision notice and statement of reasons
- Where decision notices and statement of reasons relate to EMPs for drilling of petroleum wells and/or hydraulic fracturing activities they will include details of how public comments have been considered
- Publishes and issues a notice of decision and statement of reasons to the proponent
- Oversees environmental compliance actions.

New Elements

- Publication of EMPs for drilling petroleum wells and hydraulic fracturing for public comment
- Alignment with new Code of Practice
- Disclosure of hydraulic fracturing chemicals used, flowback fluid and produced water composition
- Baseline weed assessment and weed management plans in place
- Northern Territory Aboriginal Sacred Sites Act 1989 authority certificates for protection of sacred sites required before an EMP is approved
- Baseline groundwater and methane monitoring to be completed before hydraulic fracturing can commence
- Mandatory assessment of potential cumulative effects.

Increased Transparency around Decision Making

- EMPs for drilling of petroleum wells and/or hydraulic fracturing activities must be published for public comment within 14 days of the Minister for Environment and Natural Resources accepting the EMP
- There is then a 28 day public comment period on an EMP for drilling of petroleum wells and/or hydraulic fracturing activities
- The proponent has opportunity to provide a response to the Minister on any comments received
- Public comments are required to be taken into consideration by the Minister
- Public comments will be published on the Department of Environment and Natural Resources website along with the statement of reasons should the EMP be approved.
New Elements of Assessment, Approval and Compliance Process

Application for exploration permit, retention licence or production licence

Minister for Primary Industry and Resources required to consider if proposed operator is an appropriate person to hold a licence or permit under the *Petroleum Act 1984*

Water allocation and use

Water bores and groundwater extraction for petroleum activities require approval by Controller of Water Resources under the *Water Act 1992*

Prohibited activities:
- use of surface water for petroleum activities
- use of groundwater for hydraulic fracturing within 1 km of an existing bore without obtaining landholder agreement and/or undertaking a hydrogeological investigation
- discharge of hydraulic fracturing wastewater (treated or untreated to surface water and aquifer)

Standards and requirements for operational and environment approvals

Baseline groundwater and methane monitoring and weed assessments

Operational approvals and Environment Management Plans to be compliant with new Code of Practice enforceable under the *Petroleum Act 1984 and the Petroleum (Environment) Regulations 2016*

Review of decisions

Introduction of open standing for judicial review of particular decisions or determinations under the *Petroleum Act 1984 and Petroleum (Environment) Regulations 2016*
Environment Management Plan (EMP) approval process

EMP lodged with the Minister for Environment and Natural Resources

Publication of EMP for drilling of petroleum wells or hydraulic fracturing for public comment

NT EPA with two new expert members, assess EMP and any public comments received, to determine if assessment required against the Environmental Assessment Act 1982 and if not, whether the EMP meets the requirements of the Petroleum (Environment) Regulations 2016

NT EPA provide advice to Minister for Environment and Natural Resources on assessment of EMP

Minister for Environment and Natural Resources makes decision on EMP taking into account existing (ESD* & ALARP†) and new requirements: NT EPA advice, public comments, Code of Practice compliance.

Protection of sacred sites

Authority certificate under the Northern Territory Aboriginal Sacred Sites Act 1989 required before an Environment Management Plan approval is issued

Petroleum exploration activities commence

Monitoring and Compliance

Monitoring and compliance strategy supported by public release of monitoring data and stronger on ground regulatory inspection regime.

Publishing of notifications of reportable and recordable incidents

Onshore gas non-compliance hotline to report any potential non-compliance

ESD Ecologically Sustainable Development
ALARP As Low As Reasonably Practical
Environment Management Plans

Before “regulated activities” can be undertaken, petroleum companies must have an Environment Management Plan (EMP) approved by the Minister for Environment and Natural Resources.

An EMP is an activity specific plan to ensure appropriate environmental management practices are implemented during the various stages of that activity. It identifies the key environmental matters associated with an activity and sets the requirements for managing them effectively.

The EMP is an implementation and management tool for the petroleum interest holder (proponent) to manage and inform statutory compliance by the regulator to verify that environmental outcomes are being achieved and any special conditions are being met.

Regulated activities are defined by Section 5 of the Petroleum (Environment) Regulations 2016 as activities that have or will have an environmental impact or environmental risk.

The Regulations set out what must be included in an EMP, including details about:

- Activities proposed, including site, footprint, staging, construction and operational information, water consumption, hydraulic fracturing, etc
- Existing environment and its environmental values including any information about uncertainty or lack of information about that environment
- Steps that the proponent intends to take to protect the environmental values of the area
- Site maintenance, management plans, rehabilitation and closure plans
- Any hydraulic fracturing chemicals to be used and the reason for their usage
- An assessment of potential environmental impacts and environmental risks of the project including:
  - Identification of potential impacts and risks
  - Description of the process used to assess impacts and risks including emergencies or incidents
  - Cumulative effects of project risks in conjunction with other events or projects in or near the activity
  - Indirect impacts.
- Measurement criteria and performance standards which will be used to test progress and achievement of environmental outcomes (for example, Australian Water Quality Guidelines, Code of Practice etc)
- Monitoring and reporting frameworks to demonstrate ongoing compliance and environmental performance in a way that can be monitored by the Minister and the community
- Evidence of consultation undertaken with stakeholders, including what information was provided, issues raised and how issues were resolved. Ongoing consultation arrangements must also be included
- Contact information for community or other stakeholders to contact the proposed operator.
Code of Practice

The mandatory Code of Practice provides minimum standards for environmental controls. The Code covers:

• well operations
• surface activities
• wastewater management
• methane emissions.

The new Code is enforceable under the Petroleum (Environment) Regulations 2016 and is intended to make certain operators and the community are clear about what is required for exploration and operations. These rules are important to regulatory inspectors who ensure that companies are complying with their approvals for on-ground activities. It is also important for companies themselves to know what is expected so they can make sure they operate accordingly.

Water Allocation and Use

A significant change to the Water Act 1992 mean petroleum companies now require permits to construct water bores in water control districts, and a groundwater extraction licence for water used for petroleum activities. Additional changes mean that:

• Surface water must not be used for petroleum activities. Any applications to use surface water for these purposes will be rejected
• Applications to use groundwater from within 1km of an existing bore for hydraulic fracturing will be rejected other than in specific circumstances (including written agreement with the landholder)
• Discharge of any hydraulic fracturing wastewater (treated or untreated) to surface water (e.g. rivers and streams) and aquifers is prohibited.

Review of Decisions

Legislative amendments have been made to provide for open standing for judicial review. This means that any person can now seek to have proceedings heard in the Supreme Court to challenge the lawfulness of particular decisions or determinations under the Petroleum Act 1984 and the Petroleum (Environment) Regulations 2016.

Any member of the community or a petroleum company can apply to challenge decisions as defined in the Act if they believe that the legal process was not followed correctly. They do not need to be directly affected by the decision or determination to be able to challenge the decision.

Appropriate Person Test

Changes to the Petroleum Act 1984 require the Minister for Primary Industry and Resources to be satisfied that a proposed operator is an ‘appropriate person’ (meaning individual, corporation or associated entity) to hold a permit or licence under the Petroleum Act 1984, having regard to past history and performance. Specific matters the Minister must consider include:

• Record of compliance with the environmental legislation
• Record of contraventions of legislation or previous convictions involving fraud or dishonesty
• Previous licence suspensions or revocations
• Financial capacity to comply with obligations

Monitoring and Compliance

Monitoring and auditing for compliance will be integral in the regulation of the onshore gas industry. The new regulations and requirements aim to ensure onshore petroleum activities are undertaken in an environmentally responsible way by requiring, monitoring and enforcing compliance with the law. The Northern Territory Government is developing a monitoring and compliance strategy. This strategy will provide guiding principles on how proactive and reactive compliance and monitoring decisions are made. This strategy will include public release of monitoring data. Changes have been made to the Petroleum (Environment) Regulations 2016 to ensure the publishing of notifications of reportable and recordable incidents are published within two working days of receipt by the Minister. Offences and penalties for any breaches under the Water Act 1992 have been updated to reflect modern practice when compared with other jurisdictions. A hotline to report any potential industry non-compliance has been implemented. The Onshore Gas Non-Compliance hotline is a 24 hour toll free service. All call reports are referred to the responsible regulatory authority for case management and investigation.

Onshore gas non-compliance hotline 1800 413 889