

# NORTHERN TERRITORY OF AUSTRALIA

## PETROLEUM (ENVIRONMENT) REGULATIONS 2016

As in force at 19 December 2018

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 19 December 2018

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## PETROLEUM (ENVIRONMENT) REGULATIONS 2016

### Regulations under the *Petroleum Act 1984*

#### Part 1 Preliminary matters

##### 1 Citation

These Regulations may be cited as the *Petroleum (Environment) Regulations 2016*.

##### 2 Object

The object of these Regulations is to ensure that regulated activities are carried out in a manner:

- (a) consistent with the principles of ecologically sustainable development; and
- (b) by which the environmental impacts and environmental risks of the activities will be reduced to a level that is:
  - (i) as low as reasonably practicable; and
  - (ii) acceptable.

##### 3 Definitions

In these Regulations:

***affected person***, see regulation 29(2).

***approval***, in relation to an environment management plan, means approval of the plan under regulation 11.

***approval criteria***, for an environment management plan, see regulation 9(1).

***approval notice***, for an environment management plan, see regulation 12(1).

**assessment report**, see section 7(2)(g) of the *Environmental Assessment Act 1982*.

**current plan** means:

- (a) an environment management plan approved under regulation 11 and in force; and
- (b) any conditions to which the approval is subject, as specified in the approval notice for the plan.

**day** means a calendar day.

**environment**, see section 117AAB(1) of the Act.

**environment management plan** means:

- (a) an environment management plan, or proposed revision of a current plan, submitted under regulation 6 for approval; or
- (b) a current plan.

**environmental assessment recommendation** means a recommendation or suggestion that is included in an assessment report made about a regulated activity to which an environment management plan relates.

**environmental impact** means any adverse change, or potential adverse change, to the environment resulting wholly or partly from a regulated activity.

**environmental outcome** means an outcome that will be achieved if the environmental impacts and environmental risks of a regulated activity are reduced to a level that is:

- (a) as low as reasonably practicable; and
- (b) acceptable.

**environmental performance** means the performance of an interest holder in relation to the environmental outcomes and environmental performance standards included in the interest holder's current plan.

**environmental performance standard** means a standard that:

- (a) relates to the management of environmental impacts and environmental risks of a regulated activity; and
- (b) applies to persons, systems, equipment or procedures involved in carrying out the activity.

**environmental risk** means the chance of something happening that will have an environmental impact, measured in terms of the environmental consequences and the likelihood of those consequences occurring.

**hydraulic fracturing** means the underground gas and oil extraction process that involves the injection of fluids at high pressure into a geological formation to induce fractures that conduct hydrocarbons for extraction.

**implementation strategy** means the implementation strategy for a regulated activity that is included in the environment management plan for the activity, as required by Schedule 1, Part 2.

**infringement notice**, see regulation 39.

**infringement notice offence**, see regulation 38(1).

**interest holder** means a person who holds a petroleum interest for a regulated activity.

**material environmental harm**, see section 117AAB(1) of the Act.

**measurement criteria** means the criteria to be used in determining whether an environmental outcome or environmental performance standard has been met.

**NORM** means naturally occurring radioactive materials.

**notice** means a written notice.

**plan** means an environment management plan.

**prescribed amount**, see regulation 38(2).

**prescribed chemical legislation** means the following:

- (a) *Dangerous Goods Act 1998*;
- (b) *Medicines, Poisons and Therapeutic Goods Act 2012*;
- (c) *Waste Management and Pollution Control Act 1998*;
- (d) *Water Act 1992*;
- (e) *Work Health and Safety (National Uniform Legislation) Act 2011*.

**principles of ecologically sustainable development**, see regulation 4.

**proposed revision**, of a current plan, means the plan or part of the plan as it is proposed to be revised as required under Part 2, Division 3.

**recordable incident** means an incident arising from a regulated activity:

- (a) that:
  - (i) has resulted in an environmental impact or environmental risk not specified in the current plan for the activity; or
  - (ii) has resulted in a contravention of an environmental performance standard specified in the current plan for the activity; or
  - (iii) is inconsistent with an environmental outcome specified in the current plan for the activity; and
- (b) is not a reportable incident.

**refusal notice**, for an environment management plan, see regulation 13(1).

**regulated activity**, see regulation 5.

**reportable incident** means an incident, arising from a regulated activity, that has caused or has the potential to cause material environmental harm or serious environmental harm.

**resubmission notice**, for an environment management plan, see regulation 11(2)(b).

**reviewable decision**, see regulation 29(1).

**serious environmental harm**, see section 117AAB(1) of the Act.

**stakeholder engagement** means engagement with stakeholders by an interest holder carried out in accordance with regulation 7.

#### **4 Principles of ecologically sustainable development**

The **principles of ecologically sustainable development** are as follows:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;



- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

## 5 **Regulated activity**

- (1) A **regulated activity** is an activity or a stage of an activity:
  - (a) carried out, or proposed to be carried out, in connection with a technical works programme for a petroleum interest; and
  - (b) that has, or will have, an environmental impact or environmental risk.
- (2) Without limiting subregulation (1), a **regulated activity** includes the following operations or works:
  - (a) land clearing;
  - (b) earthworks (for example, cutting, filling, excavating or trenching);
  - (c) the construction, operation, modification, decommissioning, dismantling or removal of a well, pipeline or other facility;
  - (d) establishing seismic lines or drill pads;
  - (e) conducting seismic surveys;
  - (f) drilling;
  - (g) hydraulic fracturing;
  - (h) the release of a contaminant or waste material;
  - (i) the storage and transportation of petroleum and hazardous substances.

- (3) None of the following is a regulated activity:
- (a) taking water samples;
  - (b) taking rock samples without the use of heavy machinery;
  - (c) walking or driving on existing roads or tracks in connection with an activity mentioned in paragraph (a) or (b);
  - (d) airborne surveys.

- (4) In this regulation:

**contaminant**, see section 117AAB(1) of the Act.

**facility** means a structure or installation of any kind, including a building, road, dam, pond, bridge, railway, airstrip, telephone line and power line.

**technical works programme** means:

- (a) in relation to an access authority – the statement of operations mentioned in section 57A(2)(c) of the Act; or
- (b) in relation to any other petroleum interest – the technical works programme for the exploration, appraisal, recovery or production of petroleum under the interest.

**waste material**, see section 117AAB(1) of the Act.

## **Part 2 Environment management plans**

### **Division 1 Submission of environment management plan for approval**

#### **6 Submission of plan for approval**

- (1) An interest holder who proposes to carry out a regulated activity must first submit to the Minister, for approval, an environment management plan relating to the activity.
- (2) A plan may be submitted for approval only after the interest holder has carried out stakeholder engagement in relation to the regulated activity to which the plan relates.

## 7 Stakeholder engagement

- (1) During the preparation of an environment management plan, an interest holder for the plan must carry out stakeholder engagement in accordance with this regulation.
- (2) The interest holder must:
  - (a) give each stakeholder information about:
    - (i) the regulated activity the interest holder proposes to carry out; and
    - (ii) the location (or locations) where it is proposed to carry out the activity; and
    - (iii) the anticipated environmental impacts and environmental risks of the activity; and
    - (iv) the proposed environmental outcomes in relation to the activity; and
    - (v) the possible consequences of carrying out the activity to the stakeholder's rights or activities; and
  - (b) allow a reasonable period for the stakeholder to respond to the information given by the interest holder.

- (3) In this regulation:

**stakeholder** means:

- (a) a person or body whose rights or activities may be directly affected by the environmental impacts or environmental risks of the regulated activity proposed to be carried out; or
- (b) an agent or representative of a person or body mentioned in paragraph (a).

## 8 Form and content of plan

- (1) An environment management plan must:
  - (a) be in a form acceptable to the Minister; and
  - (b) specify the contact details of the interest holder and, if applicable, the following:
    - (i) the interest holder's agent;
    - (ii) the interest holder's designated operator.

- (2) A plan must relate to only one regulated activity, regardless of whether the activity is to be carried out in one or more locations.
- (3) A plan must include a summary of the plan followed by comprehensive information about all matters necessary to be included in order to meet the approval criteria.
- (4) The summary of a plan must include the following:
  - (a) a description of the regulated activity to which the plan relates;
  - (b) the location (or locations) of the activity;
  - (ba) if the activity is hydraulic fracturing – the details about any chemical or other substance that may be in, or added to, any treatment fluids to be used in the course of the activity;
  - (c) the existing environment that may be affected by the activity;
  - (d) the environmental impacts and environmental risks of the activity;
  - (e) the environmental outcomes in relation to the activity;
  - (f) a list of stakeholders with whom the interest holder has carried out stakeholder engagement;
  - (g) the stakeholder engagement carried out and information about future stakeholder engagement.
- (5) This regulation does not prevent an interest holder from including separate plans for different regulated activities in one document.

#### **8A Publishing certain plans for comment**

- (1) The Minister must publish an environment management plan if:
  - (a) the plan is submitted to the Minister under regulation 6; and
  - (b) the plan relates to the drilling of a well or to hydraulic fracturing; and
  - (c) the plan complies with regulation 8.
- (2) The plan must be published, in any manner the Minister considers appropriate, within 14 days of the Minister receiving the plan.
- (3) The requirement to publish does not apply to:
  - (a) information received under regulation 10; or

- (b) a modified plan submitted under regulation 11; or
  - (c) a plan that relates to the drilling of a water bore.
- (4) The Minister must publish, with the plan, a notice stating the following:
- (a) that the plan is published for public comment;
  - (b) that interested persons may submit written comments on the plan to the Minister no later than 28 days after the date of its publication;
  - (c) the address to which comments may be sent or delivered;
  - (d) that all comments received will be published.
- (5) In publishing a plan, the Minister:
- (a) must withhold from the public information of a commercially confidential nature; and
  - (b) may withhold other information from the public if satisfied there are reasonable grounds for doing so.

#### **8B Public comments on plan**

- (1) Interested persons may submit written comments on a plan published under regulation 8A to the Minister no later than 28 days after the date of its publication.
- (2) The Minister must publish any comments submitted under subregulation (1), in any manner the Minister considers appropriate, after the end of the 28 day period.

### **Division 2 Minister's decision about approval of environment management plan**

#### **9 Approval criteria for plan**

- (1) The ***approval criteria*** for an environment management plan are that the plan must:
  - (a) include all the information required by Schedule 1; and
  - (b) be appropriate for the nature and scale of the regulated activity to which the plan relates; and

- (c) demonstrate that the activity will be carried out in a manner by which the environmental impacts and environmental risks of the activity will be reduced to a level that is:
  - (i) as low as reasonably practicable; and
  - (ii) acceptable.
- (2) When considering whether an environment management plan meets the approval criterion mentioned in subregulation (1)(c), the Minister must take into account:
  - (a) the principles of ecologically sustainable development; and
  - (b) if an environmental report or statement has been prepared, or is required to be prepared, in relation to the regulated activity to which the plan relates – each environmental assessment recommendation in the assessment report made about the activity.
- (3) In this regulation:

***environmental report or statement*** means a public environmental report or environmental impact statement mentioned in section 7(2) of the *Environmental Assessment Act 1982*.

## **10 Minister may require further information**

- (1) The Minister may give an interest holder who has submitted an environment management plan a notice requiring further information about any matter required by these Regulations to be included in a plan.
- (2) The notice must specify:
  - (a) each matter about which further information is required; and
  - (b) a reasonable period within which the information must be given to the Minister.
- (3) Further information given within the period specified in the notice, or within an approved longer period, becomes part of the plan submitted by the interest holder.

## **11 Approval of plan, refusal to approve and other actions**

- (1) The Minister must make a decision under subregulation (2) as soon as practicable, but no later than 90 days, after an interest holder submits an environment management plan for approval.

- (1A) The Minister must take into account any comments submitted under regulation 8B when making a decision under subregulation (2) in relation to a plan published under regulation 8A.
- (2) The Minister must:
- (a) if reasonably satisfied that the plan meets the approval criteria:
    - (i) approve the plan, with or without conditions; and
    - (ii) give the interest holder an approval notice and statement of reasons for the approval; or
  - (b) if not reasonably satisfied that the plan meets the approval criteria – give the interest holder a notice (a **resubmission notice**) specifying:
    - (i) the Minister is not reasonably satisfied that the plan meets the approval criteria; and
    - (ii) the reasons why the Minister is not reasonably satisfied; and
    - (iii) a reasonable period within which the interest holder may modify the plan and submit it for approval; or
  - (c) if satisfied that more than 90 days will be required to make a decision for paragraph (a) or (b) – give the interest holder a notice setting out a proposed timetable for consideration of the plan.
- (3) Within 30 days after an interest holder submits a plan that is modified in response to a resubmission notice, the Minister must:
- (a) if reasonably satisfied that the plan meets the approval criteria:
    - (i) approve the plan, with or without conditions; and
    - (ii) give the interest holder an approval notice and statement of reasons for the approval; or
  - (b) if not reasonably satisfied that the plan meets the approval criteria:
    - (i) give the interest holder a further resubmission notice; or

- (ii) refuse to approve the plan and give the interest holder a refusal notice and statement of reasons for the refusal; or
  - (c) if satisfied that more than 30 days will be required to make a decision for paragraph (a) or (b) – give the interest holder a notice setting out a proposed timetable for consideration of the modified plan.
- (4) If an interest holder given a resubmission notice does not submit a modified plan within the period specified in the notice, or a further approved period, the Minister must:
  - (a) refuse to approve the plan originally submitted by the interest holder; and
  - (b) give the interest holder a refusal notice and a statement of reasons for the refusal.
- (5) Despite subregulations (1) and (3), an approval of a plan or a refusal to approve a plan is not invalid only because the Minister did not give the interest holder a notice under the relevant subregulation within the period mentioned in the subregulation.

## 12 Approval notice and statement of reasons

- (1) An **approval notice** is a notice of the Minister's approval of an environment management plan under regulation 11.
- (2) If the Minister's approval of a plan is subject to conditions, the conditions must be included in the approval notice for the plan.
- (3) An approval notice for a plan must be accompanied by a statement of reasons for the approval that includes the following:
  - (a) information about:
    - (i) how the plan meets the approval criteria; and
    - (ii) the manner in which the Minister has taken into account the principles of ecologically sustainable development when considering whether or not the plan meets the approval criteria; and
    - (iii) if an assessment report has been made about the regulated activity to which the plan relates – the manner in which the Minister has taken into account each environmental assessment recommendation in the report when considering whether or not the plan meets the approval criteria;



- (b) if the Minister's decision is inconsistent with an environmental assessment recommendation made in relation to the regulated activity to which the plan relates:
  - (i) details of the recommendation; and
  - (ii) the reasons for the inconsistency.

### **13 Refusal notice and statement of reasons**

- (1) A **refusal notice** is a notice of the Minister's refusal to approve an environment management plan under regulation 11.
- (2) A refusal notice for a plan must be accompanied by a statement of reasons for the refusal that includes the following:
  - (a) the reasons why the Minister is not reasonably satisfied that the environment management plan meets the approval criteria;
  - (b) the manner in which the Minister has taken into account the principles of ecologically sustainable development when considering whether or not the plan meets the approval criteria;
  - (c) if an assessment report has been made about the regulated activity to which the plan relates – the manner in which the Minister has taken into account each environmental assessment recommendation in the report when considering whether or not the plan meets the approval criteria.

### **14 Duration of current plan**

Unless the approval of a current plan is revoked under Division 6, the plan remains in force until:

- (a) an interest holder for the plan gives the Minister a notice that:
  - (i) the regulated activity to which the plan relates is no longer being carried out; and
  - (ii) all of the environmental outcomes and the interest holder's obligations under the plan have been met; and
- (b) the Minister gives notice to the interest holder specifying that the holder's notice is accepted and the plan has ceased to be in force.

### **Division 3 Current plan – revision**

#### **15 Application of Divisions 1 and 2**

Divisions 1 and 2 apply in relation to a proposed revision of a current plan as if it were the original environment management plan submitted under regulation 6.

#### **16 Form of proposed revision**

- (1) A proposed revision of a current plan must be in the form of a revised environment management plan or, if approved, a revised part of the plan.
- (2) If a proposed revision is in the form of a revised part of the current plan:
  - (a) Divisions 1 and 2 apply in relation to that part (with the necessary changes) as if it were the whole plan; but
  - (b) the Minister must be satisfied that the whole plan, as it is proposed to be revised, meets the approval criteria before the Minister may approve the proposed revision.

#### **17 Revision required for new or increased environmental impact or environmental risk**

- (1) This regulation applies if there has been:
  - (a) a new environmental impact or environmental risk not provided for in the current plan for the activity; or
  - (b) an increase, not provided for in the current plan for the activity, in an existing environmental impact or environmental risk.
- (2) The interest holder must submit to the Minister, for approval, a proposed revision of the current plan no later than 30 days after the occurrence in subregulation (1)(a) or (b) has occurred.
- (3) An interest holder who contravenes subregulation (2) commits an offence.

Maximum penalty: 100 penalty units.

- (4) An offence against subregulation (3) is a regulatory offence.

## **18 Revision required at end of each 5 year period**

- (1) An interest holder for a current plan must submit to the Minister, for approval, a proposed revision of the current plan at least 90 days before the end of each period of 5 years, starting on the latest of the following:
  - (a) the day on which the interest holder is given the original approval notice for the plan;
  - (b) the day on which the interest holder is given an approval notice relating to a proposed revision of the plan submitted for approval as required by this regulation;
  - (c) in relation to a proposed revision approved by the Minister following its submission as required by any other provision of this Division – the day specified in a notice given to the interest holder by the Minister.
- (2) An interest holder who contravenes subregulation (1) commits an offence.

Maximum penalty: 100 penalty units.

- (3) An offence against subregulation (2) is a regulatory offence.

## **19 Minister may require revision**

- (1) This regulation applies if the Minister is reasonably satisfied that a current plan for a regulated activity requires revision.
- (2) The Minister must give the interest holder a notice (a **revision notice**) requiring the holder to submit to the Minister a proposed revision of the current plan.
- (3) The revision notice must specify:
  - (a) the proposed revision that is required; and
  - (b) the period, of not less than 21 days after receipt of the notice, within which the interest holder must:
    - (i) submit the proposed revision; or
    - (ii) make a submission under regulation 20; and
  - (c) the reason for the requirement.
- (4) Despite subregulation (3)(b), the Minister may, on written application by the interest holder made within the 21 days mentioned in that provision, extend the specified period.

- (5) An interest holder given a revision notice commits an offence if the holder contravenes the notice.

Maximum penalty: 100 penalty units.

- (6) An offence against subregulation (5) is a regulatory offence.

**20 Submission by interest holder about revision required by Minister**

- (1) An interest holder given a revision notice under regulation 19(2) may make a written submission to the Minister stating reasons:

(a) why the revision required by the Minister should not be made;  
or

(b) why the proposed revision should be different from the revision required by the Minister.

- (2) If the submission is made within the time specified in the revision notice, or as extended under regulation 19(4), the Minister must make a decision whether a revision is still required and:

(a) if a revision is no longer required – give the interest holder notice of the decision, including a statement withdrawing the requirement for the proposed revision; and

(b) if a revision is still required, either as originally specified or as modified – give notice of the decision, including:

(i) the reasons for the revision; and

(ii) the proposed revision that is required; and

(iii) the period, of not less than 21 days after receipt of the notice, within which the interest holder must submit the proposed revision.

- (3) An interest holder given a notice of a decision mentioned in subregulation (2)(b) commits an offence if the holder contravenes the notice.

Maximum penalty: 100 penalty units.

- (4) An offence against subregulation (3) is a regulatory offence.

**21 Effect of refusal to approve proposed revision**

If the Minister refuses to approve a proposed revision of a current plan, the provisions of the current plan remain in force, subject to these Regulations (in particular, Division 6), as if the revision had not been proposed.

**Division 4 Current plan – modification or change**

**22 Modification to regulated activity**

- (1) This regulation applies if an interest holder for a current plan proposes to modify the regulated activity to which the plan relates in a manner that will not require a revision of the plan.
- (2) Before the interest holder modifies the regulated activity, the holder must give the Minister a notice that specifies details of the proposed modification.
- (3) An interest holder who contravenes subregulation (2) commits an offence.

Maximum penalty: 50 penalty units.

- (4) An offence against subregulation (3) is a regulatory offence.

**23 Change in existing environment**

- (1) This regulation applies if:
  - (a) there is a change in the existing environment that is described in a current plan, as required by Schedule 1, clause 2; and
  - (b) the change will not require a revision of the plan.
- (2) Within 30 days after the change occurs, the interest holder for the current plan must give the Minister a notice that specifies details of the change.
- (3) An interest holder who contravenes subregulation (2) commits an offence.

Maximum penalty: 50 penalty units.

## **Division 5 Publication of current plans and other information**

### **24 Publication of current plan and statement of reasons**

Within 14 days after the Minister gives an interest holder an approval notice for an environment management plan, the Minister must publish:

- (a) the current plan to which the notice applies; and
- (b) the statement of reasons that accompanied the notice.

### **25 Publication of reports relating to environmental matters**

- (1) Within 14 days after an interest holder gives the Minister a report about environmental matters, the Minister must publish the report.
- (2) For subregulation (1), a report about environmental matters is a report for which arrangements are specified in a current plan for recording, monitoring and reporting particular information, as required by Schedule 1, clause 11.

### **26 Method of publication and confidentiality**

- (1) The Minister may publish a document mentioned in this Division in any manner the Minister considers appropriate.
- (2) However, the Minister:
  - (a) must withhold from the public information of a commercially confidential nature; and
  - (b) may withhold other information from the public if satisfied there are reasonable grounds for doing so.

## **Division 6 Revocation of approval of current plan**

### **27 Decision to revoke approval**

- (1) The Minister may revoke the approval of a current plan if:
  - (a) the Minister is reasonably satisfied that:
    - (i) an interest holder for the plan, or another person to whom the plan relates, has contravened section 117AAC(1), (3), (5), (7) or (9) of the Act or regulation 31(1) or 32(1); or

- (ii) an interest holder for the plan has contravened a requirement under Division 3 for a revision of a current plan; or
  - (b) the Minister has refused to approve a proposed revision of the plan and no application for a review of the decision has been made under regulation 29 within the period allowed for a review.
- (2) However, the Minister must not make a decision to revoke the approval of a current plan until the Minister has given notice of the intention to revoke, and followed all the steps, under regulation 28.
- (3) If, after following those steps, the Minister decides to revoke the approval, the Minister must give the interest holder a notice of that decision.
- (4) The Minister may revoke the approval of a current plan for a reason mentioned in subregulation (1)(a), even though no person has been found guilty of an offence in relation to a contravention mentioned in the provision.
- (5) A person may be found guilty of an offence for a contravention mentioned in subregulation (1)(a) even though the approval of the current plan has been revoked.

## **28 Steps to be taken before making decision to revoke**

- (1) If the Minister intends to revoke the approval of a current plan, the Minister must comply with subregulations (2), (4) and (5).
- (2) The Minister must give the interest holder at least 30 days notice of the Minister's intention.
- (3) The Minister may give a copy of the notice to any other persons the Minister considers should receive the notice.
- (4) The Minister must specify in the notice:
  - (a) the reasons why the Minister intends to revoke the approval; and
  - (b) a date before which the interest holder, or another person given the notice, may give the Minister a written submission of matters to be taken into account in relation to the revocation.
- (5) The Minister must take into account:
  - (a) each submission given to the Minister before the date specified in the notice; and

- (b) any action taken by the interest holder to cease or prevent the recurrence of the contravention, or deal with the matter, that gave the Minister reasons to revoke the approval.

## **Division 7 Review of decisions**

### **29 Review by Tribunal**

- (1) The Tribunal has jurisdiction to review a decision (a **reviewable decision**) specified in Schedule 2.
- (2) An **affected person**, for a reviewable decision, is a person specified in Schedule 2 for the decision.
- (3) An affected person for a reviewable decision may apply to the Tribunal for review of the decision.
- (4) In this section:

**Tribunal** means the Civil and Administrative Tribunal.

*Note for regulation 29*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.*

## **Division 8 Offences**

### **30 Requirement for current plan**

- (1) A person who carries out a regulated activity for which there is no current plan commits an offence.

Maximum penalty: 200 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.

### **31 Compliance with current plan**

- (1) A person who carries out a regulated activity in a manner that contravenes the current plan for the activity commits an offence.

Maximum penalty: 200 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.

- (3) Subregulation (1) does not apply if the activity is being carried out in a manner that is consistent with a modification notified under regulation 22.



**32 New or increased environmental impact or environmental risk**

- (1) A person commits an offence if:
- (a) the person carries out a regulated activity; and
  - (b) either of the following circumstances occurs:
    - (i) a significant new environmental impact or environmental risk results from the activity;
    - (ii) a significant increase in an existing environmental impact or environmental risk results from the activity; and
  - (c) the circumstance is not provided for in the current plan.

Maximum penalty: 200 penalty units.

- (2) Subregulation (1) does not apply in relation to an activity if the interest holder submits a proposed revision of the environment management plan in respect of the circumstances mentioned in subregulation (1)(b) and the Minister has not refused to approve the plan.

**Part 3 Reportable incidents, recordable incidents and records**

**Division 1 Reportable incidents and recordable incidents**

**33 Notice of reportable incident**

- (1) An interest holder for a regulated activity commits an offence if the holder does not give the Minister notice of a reportable incident in accordance with this regulation.

Maximum penalty: 200 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) Notice of the reportable incident:
- (a) must be given to the Minister as soon as practicable but not later than 2 hours after:
    - (i) the incident first occurred; or

- (ii) if the incident was not detected by the interest holder at the time it first occurred – the time the interest holder became aware of the reportable incident; and
  - (b) may be given orally or in writing; and
  - (c) must specify:
    - (i) the contact details of the interest holder; and
    - (ii) all material facts and circumstances about the reportable incident that the interest holder knows or is able, by reasonable search or enquiry, to find out; and
    - (iii) information about any action taken to avoid or mitigate material environmental harm or serious environmental harm in relation to the reportable incident; and
    - (iv) information about the corrective action that has been taken, or is proposed to be taken, to prevent a similar reportable incident.
- (4) If the interest holder gives notice of the reportable incident orally, the holder must, not later than 24 hours after giving oral notice, give the Minister a written notice about the reportable incident specifying all the matters mentioned in subregulation (3)(c).

#### **34 Report about reportable incident**

- (1) An interest holder for a regulated activity commits an offence if the holder does not give the Minister written reports about a reportable incident in accordance with this regulation.

Maximum penalty: 200 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) An initial report about a reportable incident:
- (a) must be given to the Minister as soon as practicable but not later than 3 days after the reportable incident first occurs; and
  - (b) must include comprehensive details about the following:
    - (i) the results of any assessment or investigation of the conditions or circumstances that caused or contributed to the occurrence of the reportable incident, including an assessment of the effectiveness of the designs, equipment, procedures and management systems that were in place to prevent the occurrence of an incident of

that nature;

- (ii) the nature and extent of the material environmental harm or serious environmental harm that the incident caused or had the potential to cause;
  - (iii) any actions taken, or proposed to be taken, to clean up or rehabilitate an area affected by the incident;
  - (iv) any actions taken, or proposed to be taken, to prevent a recurrence of an incident of a similar nature.
- (4) A final report about a reportable incident must be given to the Minister as soon as practicable but no later than 30 days after the clean up or rehabilitation of the area affected by the reportable incident is completed.
- (5) The final report must include a root cause analysis of the reportable incident.
- (6) During the period between giving the initial report and the final report, the interest holder must give the Minister interim reports that include further information about the matters mentioned in subregulation (3)(b) and any other matters relevant to the reportable incident.
- (7) Interim reports must be given to the Minister:
- (a) at intervals agreed in writing between the interest holder and the Minister; or
  - (b) if there is no written agreement – at intervals of 90 days, starting on the day on which the initial report was given.

### **35 Report about recordable incident**

- (1) An interest holder for a regulated activity commits an offence if the holder does not give the Minister a written report about recordable incidents in accordance with this regulation.

Maximum penalty: 100 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) A report about recordable incidents:
- (a) must relate to each reporting period for the regulated activity; and

- (b) must be given as soon as practicable but not later than 15 days after the end of the reporting period; and
- (c) must contain:
  - (i) a record of all recordable incidents that occurred during the reporting period; and
  - (ii) all material facts and circumstances concerning the recordable incidents that the interest holder knows or is able, by reasonable search or enquiry, to find out; and
  - (iii) any action taken to avoid or mitigate any environmental impacts and environmental risks of the recordable incidents; and
  - (iv) the corrective action that has been taken, or is proposed to be taken, to prevent similar recordable incidents.
- (4) In this regulation:
  - reporting period*** means:
    - (a) a period agreed in writing between the interest holder and the Minister; or
    - (b) otherwise – each 90 day period after the day on which the environment management plan is approved.

### **35A Publication of notices and reports**

- (1) The Minister must publish the following documents:
  - (a) written notice of a reportable incident under regulation 33;
  - (b) a final report about a reportable incident under regulation 34;
  - (c) a report about recordable incidents under regulation 35.
- (2) The document must be published, in any manner the Minister considers appropriate, as soon as practicable but no later than 2 business days of the Minister receiving the notice or report.
- (3) In publishing the document, the Minister:
  - (a) must withhold from the public information of a commercially confidential nature; and
  - (b) may withhold other information from the public if satisfied there are reasonable grounds for doing so.

## Division 2 Records

### 36 Records to be kept

- (1) An interest holder for a regulated activity commits an offence if the holder does not keep the prescribed records for the activity:
- (a) in Australia; and
  - (b) for the longer of the following periods:
    - (i) 5 years following the period during which the petroleum interest for the activity is in force;
    - (ii) 15 years after the record comes into existence; and
  - (c) in a manner that makes retrieval of the record reasonably practicable.

Maximum penalty: 100 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) For subregulation (1), the **prescribed records** for the activity are the following documents:
- (a) the original environment management plan, as approved by the Minister;
  - (b) each revision of the plan, as approved by the Minister;
  - (c) reports, including monitoring, audit and review reports, about environmental performance or the implementation strategy under the plan;
  - (d) records of emissions and discharges into the environment made in accordance with the plan;
  - (e) records of calibration and maintenance of monitoring devices used in accordance with the plan;
  - (f) records of, and copies of reports about, reportable incidents and recordable incidents;
  - (g) certificates associated with the disposal of waste;
  - (h) information or records relating to stakeholder engagement;
  - (i) all documents developed or received by the interest holder in relation to matters to which these Regulations apply;

- (j) records of any other documents the interest holder is required by these Regulations to keep.
- (4) Reports mentioned in subregulation (3)(c) must include details of the methodology used for, and the results of, all monitoring and sampling activities, including raw data.

### **37 Making prescribed records available**

- (1) An interest holder for a regulated activity commits an offence if the holder does not make available, in accordance with this regulation, copies of the prescribed records mentioned in regulation 36(3).

Maximum penalty: 100 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) The Minister or an inspector may request an interest holder to make copies available to the person making the request.
- (4) The copies must be made available:
  - (a) if there is an emergency in relation to the activity – as soon as possible at any time of the day or night on any day during the occurrence of the emergency; or
  - (b) otherwise – during normal business hours.
- (5) The copies must be made available (including by means of electronic transmission):
  - (a) at the Agency's address; or
  - (b) if agreed between the interest holder and the person making the request – at any other place.
- (6) If a record is kept in a computer, the copy must be made available to the person who requested the record:
  - (a) in electronic form that is readable by that person; or
  - (b) if requested by that person – in print-out form.

## **Part 3A            Reporting requirements for hydraulic fracturing**

### **37A            Report about flowback fluid**

- (1) An interest holder in relation to an activity that includes hydraulic fracturing must give the Minister a report about flowback fluid within 6 months of the flowback occurring.
- (2) The report must contain the following information:
  - (a) the identity of any chemical or NORM found in the flowback fluid;
  - (b) the concentration of any chemical or NORM found in the flowback fluid;
  - (c) details regarding how any chemical or NORM has been or will be managed;
  - (d) details regarding how any chemical or NORM has been or will be transported;
  - (e) details regarding how any chemical or NORM has been or will be treated;
  - (f) details regarding any action proposed to be taken to prevent any chemical or NORM spill;
  - (g) details of the emergency contingency plan included in the environment management plan to which the activity relates;
  - (h) the requirements in relation to the management of any chemical or NORM of the prescribed chemical legislation.

*Note for subregulation (2)(c)*

*Managed includes handling, collecting and storing any chemical or NORM.*

- (3) An interest holder commits an offence if the interest holder does not comply with subregulation (1).

Maximum penalty:        200 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.
- (5) The Minister must publish the report on the Agency's website within 5 business days after receiving the report.
- (6) In this regulation:

**flowback fluid** means fluid that is a mixture of hydraulic fracturing fluid and formation fluid that is allowed to flow from the well following hydraulic fracturing.

**37B Report about produced water**

- (1) An interest holder in relation to an activity that includes hydraulic fracturing must give the Minister a report about produced water within 6 months of the produced water being extracted.
- (2) The report must contain the following information:
  - (a) the identity of any chemical or NORM found in the produced water;
  - (b) the concentration of any chemical or NORM found in the produced water;
  - (c) details regarding how any chemical or NORM has been or will be managed;
  - (d) details regarding how any chemical or NORM has been or will be transported;
  - (e) details regarding how any chemical or NORM has been or will be treated;
  - (f) details regarding any action proposed to be taken to prevent any chemical or NORM spill;
  - (g) details of the emergency contingency plan included in the environment management plan to which the activity relates;
  - (h) the requirements in relation to the management of any chemical or NORM of the prescribed chemical legislation.

*Note for subregulation (2)(c)*

*Managed includes handling, collecting and storing any chemical or NORM.*

- (3) An interest holder commits an offence if the interest holder does not comply with subregulation (1).

Maximum penalty: 200 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.
- (5) The Minister must publish the report on the Agency's website within 5 business days after receiving the report.
- (6) In this regulation:



**produced water** means naturally occurring water that is extracted from the geological formation following hydraulic fracturing.

## **Part 4                    Infringement notice offences**

### **38                    Infringement notice offence and prescribed amount payable**

- (1) An **infringement notice offence** is an offence against a provision specified in Schedule 3.
- (2) The **prescribed amount** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in Schedule 3.

### **39                    When infringement notice may be given**

If an inspector believes on reasonable grounds that a person has committed an infringement notice offence, the inspector may give a notice (an **infringement notice**) to the person.

### **40                    Contents of infringement notice**

- (1) The infringement notice must specify the following:
  - (a) the name and address of the person, if known;
  - (b) the date the infringement notice is given to the person;
  - (c) the date, time and place of the infringement notice offence;
  - (d) a description of the offence;
  - (e) the prescribed amount payable for the offence;
  - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act 2001*, to whom the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
  - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
  - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act 2001* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;

- (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act 2001*, including (but not limited to) action for the following:
  - (i) suspending the person's licence to drive;
  - (ii) seizing personal property of the person;
  - (iii) deducting an amount from the person's wages or salary;
  - (iv) registering a statutory charge on land owned by the person;
  - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

#### **41 Payment by cheque**

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

#### **42 Withdrawal of infringement notice**

- (1) The Chief Executive Officer may withdraw the infringement notice by notice given to the person.
- (2) The notice must be given:
  - (a) within 28 days after the infringement notice is given to the person; and
  - (b) before payment of the prescribed amount.

#### **43 Application of Part**

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) Also, this Part does not:
  - (a) require an infringement notice to be given; or
  - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been

given; or

- (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

## **Schedule 1 Information to be included in environment management plan**

regulation 9

### **Part 1 Regulated activity and environment**

#### **1 Description of regulated activity**

A plan must give a comprehensive description of the regulated activity to which it relates and include:

- (a) the location (or locations) of the activity; and
- (b) general details of the construction and layout of any facility associated with the activity; and
- (c) an outline of, and proposed timetable for, the operational details of the activity.

#### **2 Description of existing environment**

A plan must include:

- (a) a description of the existing environment that may be affected by the regulated activity described in the plan; and
- (b) details of any particular values and sensitivities of that environment relevant to the activity; and
- (c) details of any uncertainties or lack of understanding in relation to that environment.

#### **3 Assessment of environmental impacts and environmental risks**

(1) A plan must include:

- (a) details of all environmental impacts and environmental risks of the regulated activity described in the plan and an assessment of those impacts and risks; and
- (b) a description of the process used to assess the environmental impacts and environmental risks.

- (2) The assessment mentioned in subclause (1)(a) must be of:
- (a) all the environmental impacts and environmental risks arising directly or indirectly from:
    - (i) all aspects of the regulated activity; and
    - (ii) potential emergency conditions, whether resulting from an incident or any other reason; and
  - (b) the cumulative effects of those impacts and risks when considered with each other and in conjunction with any other activities or events that occurred or may occur in or near the permit area for the regulated activity.

*Example for clause 3(2)(b) of other activities or events*

*Activities or events associated with:*

*(a) other exploration for, or production of, petroleum; or*

*(b) the exploration for, or extraction of, minerals or extractive minerals.*

#### **4 Environmental outcomes and environmental performance standards**

A plan must specify:

- (a) the environmental outcomes in relation to the regulated activity described in the plan; and
- (b) the environmental performance standards against which the performance of the interest holder in achieving the environmental outcomes can be measured; and
- (c) the measurement criteria to be used to ensure the environmental outcomes and environmental performance standards are met.

#### **4A Chemicals used in the course of hydraulic fracturing**

If the activity is hydraulic fracturing, a plan must specify the following information in relation to any chemical or other substance that may be in, or added to, any treatment fluids to be used in the course of the activity:

- (a) the identity of the chemical or other substance;
- (b) the volume of the chemical or other substance;
- (c) the concentration of the chemical or other substance;
- (d) the purpose of the chemical or other substance;

- (e) details regarding how the chemical or other substance will be managed;
- (f) details regarding how the chemical or other substance will be transported on-site;
- (g) details regarding any action proposed to be taken to prevent a spill of the chemical or other substance;
- (h) the requirements in relation to the management of the chemical or other substance of the prescribed chemical legislation.

*Note for clause 4A(e)*

*Managed includes handling, collecting and storing any chemical or other substance.*

## **Part 2 Implementation strategy**

### **5 Requirement for implementation strategy**

A plan must include an implementation strategy, in accordance with this Part, for the regulated activity described in the plan.

### **6 Details of systems, monitoring, tests etc.**

- (1) An implementation strategy must provide for:
  - (a) ongoing monitoring and review of the strategy; and
  - (b) monitoring, recording, audit and management of non-conformance with the plan and review of the interest holder's environmental performance.
- (2) The implementation strategy must give details of:
  - (a) the specific systems, practices and procedures to be used to ensure that the environmental outcomes and environmental performance standards in the plan are met; and
  - (b) the following, as relevant to the regulatory activity described in the plan:
    - (i) the monitoring of its environmental impact;
    - (ii) the monitoring of emissions and discharges (whether occurring during normal operations or otherwise);
    - (iii) the carrying out and recording of the monitoring mentioned in this paragraph in a manner that is accurate

and can be audited against the environmental performance standards and measurement criteria specified in the plan, and the intervals at which each type of monitoring will be carried out;

- (iv) tests to be carried out to assess the performance and accuracy of the equipment used for the monitoring mentioned in this paragraph, and the intervals at which the tests are to be carried out.

## **7 Personnel**

An implementation strategy must:

- (a) establish a clear chain of command, including during emergencies or potential emergencies; and
- (b) set out the roles and responsibilities of personnel in relation to the implementation, management and review of the plan; and
- (c) specify measures to ensure that each employee or contractor working on, or in connection with, the regulated activity described in the plan:
  - (i) is aware of his or her responsibilities in relation to the plan, including during emergencies or potential emergencies; and
  - (ii) has the appropriate competencies and training.

## **8 Emergency contingency plan**

An implementation strategy must include:

- (a) a contingency plan that specifies arrangements for the response to emergencies or potential emergencies; and
- (b) provisions for the implementation and maintenance of the contingency plan.

## **Part 3 Other matters**

### **9 Stakeholder engagement**

- (1) A plan must include information about the stakeholder engagement carried out by the interest holder that includes the following:
  - (a) a list of the stakeholders and the stakeholder's contact details;

- (b) a copy of the information provided to the stakeholders by the interest holder;
  - (c) if written responses have been received from stakeholders – a summary and copy of each response;
  - (d) an assessment of the merits of any objection or claim made by a stakeholder about the anticipated environmental impact of the proposed regulated activity;
  - (e) a statement of the interest holder's response, or proposed response, to each objection or claim made by a stakeholder;
  - (f) a record of communications with stakeholders that is not mentioned in paragraph (b), (c) or (e), (for example, telephone discussions);
  - (g) details of changes the interest holder made as a result of the stakeholder engagement.
- (2) A plan must also include information about future stakeholder engagement to be carried out by the interest holder.

## **10 Legislative requirements**

A plan must:

- (a) specify any legislative requirements applicable to the regulated activity described in the plan that are relevant to the practices and processes used to manage the environmental aspects of the activity; and
- (b) demonstrate how those requirements will be met.

## **11 Recording, monitoring and reporting**

- (1) A plan must specify arrangements for:
- (a) recording, monitoring and reporting information about the regulated activity to which the plan relates in a manner that will enable the Minister to determine whether the environmental outcomes and environmental performance standards in the plan are being met; and
  - (b) giving the Minister a report about the matters mentioned in paragraph (a), at approved intervals, but not less often than annually.



- (2) The information mentioned in subclause (1) includes information required to be recorded, monitored or reported under these Regulations or any other law in force in the Territory applying to the regulated activity.

**12 Notifying commencement of construction, drilling or seismic survey**

A plan must specify arrangements for the interest holder to notify the following persons before the proposed date of commencement of construction, drilling or seismic surveys:

- (a) the Minister;
- (b) the occupier of the land on which the activity is to be carried out;
- (c) the owner of the land on which the activity is to be carried out (unless the owner is also the occupier).

## **Schedule 2 Reviewable decisions and affected persons**

regulation 29

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<b>Reviewable decision</b>	<b>Affected person</b>
Approval under regulation 11 approving an environment management plan subject to conditions	The interest holder who submitted the plan for approval
Refusal under regulation 11 to approve an environment management plan	The interest holder who submitted the plan for approval
Decision under regulation 20(2) to require a revision	The interest holder for the plan
Decision under regulation 27(1) to revoke the approval of a current plan	The interest holder for the plan

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**Schedule 3      Infringement notice offences and prescribed amounts**

regulation 38

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<b>Provision</b>	<b>Prescribed amount in penalty units</b>
Regulation 17(3)	3 for an individual 10 for a body corporate
Regulation 18(2)	3 for an individual 10 for a body corporate
Regulation 19(5)	3 for an individual 10 for a body corporate
Regulation 20(3)	3 for an individual 10 for a body corporate
Regulation 22(3)	1 for an individual 5 for a body corporate
Regulation 23(3)	1 for an individual 5 for a body corporate
Regulation 30(1)	5 for an individual 20 for a body corporate
Regulation 31(1)	5 for an individual 20 for a body corporate
Regulation 33(1)	5 for an individual 10 for a body corporate
Regulation 34(1)	5 for an individual 10 for a body corporate
Regulation 35(1)	3 for an individual 10 for a body corporate
Regulation 36(1)	3 for an individual 10 for a body corporate
Regulation 37(1)	3 for an individual 10 for a body corporate

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Petroleum (Environment) Regulations (SL No. 32, 2016)***

Notified	6 July 2016
Commenced	6 July 2016

***Petroleum (Environment) Amendment Regulations (SL No. 27, 2018)***

Notified	19 December 2018
Commenced	19 December 2018

***Petroleum (Environment) Further Amendment Regulations (SL No. 28, 2018)***

Notified	19 December 2018
Commenced	19 December 2018

**3****GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: rr 1, 3, 9, 29 and 40.

**4****LIST OF AMENDMENTS**

r 3	amd No. 27, 2018, r 4; No. 28, 2018, r 4
r 8	amd No. 28, 2018, r 5
rr 8A – 8B	ins No. 27, 2018, r 5
r 11	amd No. 27, 2018, r 6
r 35A	ins No. 27, 2018, r 7
pt 3A hdg	ins No. 28, 2018, r 6
rr 37A – 37B	ins No. 28, 2018, r 6
sch 1	amd No. 27, 2018, r 8; No. 28, 2018, r 7