EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 28


(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
GENERAL OUTLINE

The Regulations are made in accordance with section 781 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the Offshore Act).

The Offshore Act provides the legal framework for the exploration for and recovery of petroleum and for the injection and storage of greenhouse gas substances in those parts of Australia's continental shelf and Exclusive Economic Zone which are under Commonwealth jurisdiction. The regulator for all greenhouse gas related activities under the Offshore Act is the responsible Commonwealth minister (the Minister) (currently the Hon Martin Ferguson AM MP, Minister for Resources and Energy).

The purpose of the Regulations is to develop an objective based system for the regulation of all down-hole drilling activities associated with greenhouse gas wells and well control equipment, including testing and monitoring equipment. An objective based system will allow for well activity arrangements to be changed in response to improved technologies and other circumstances while adhering to the key legislative principles.

The Regulations will require companies conducting such activities to submit a Well Operations Management Plan (WOMP) to the Minister for acceptance. In accordance with sound engineering principles and good oil-field practice, a WOMP should include a description of the design, construction and management of the well activity and a plan for managing the risks identified for the activity. A company can revise the WOMP if circumstances change. However, any modification must be accepted by the Minister prior to implementation.

The Regulations are a substantially identical version of the Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004 (which are still applicable for all petroleum related activities). They have been specifically designed to apply to all greenhouse gas related activities which were recently incorporated into the Offshore Act in November 2008 and will apply as an interim measure pending the conclusion of the regulation consolidation exercise.

Details of the Regulations are set out in the Attachment.

Stakeholder consultation was undertaken in July-October 2009.

FINANCIAL IMPACT STATEMENT

These amendments do not have any financial impact on the Australian Government budget.

REGULATORY IMPACT STATEMENT

These amendments do not pose new regulatory burden on the petroleum or greenhouse gas storage industries.
NOTES ON INDIVIDUAL CLAUSES

Part 1 – Introduction

Regulation 1.1 - Name of Regulations

This provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage (Management of Greenhouse gas Well Operations) Regulations 2010*.

Regulation 1.2 - Commencement

The Regulations are to commence on the day following registration on the Federal Register of Legislative Instruments.

Regulation 1.3 - Object of Regulations

This Regulation provides that the object of these Regulations is to ensure that, for greenhouse gas exploration, appraisal and injection in an offshore area:

- ‘down-hole’ activities are carried out in accordance with an accepted well operations management plan; and
- risks are identified and managed in accordance with sound engineering principles and good oil-field practice.

The Offshore Act has defined good oil-field practice as "all those things that are generally accepted as good and safe in the carrying on of exploration for petroleum, or in operations for the recovery of petroleum, as the case may be". Note: this is also applicable for GHG wells.

Regulation 1.4 - Definitions

This Regulation defines terms used in the Regulations that are not already defined in the Offshore Act or have a different meaning in the Offshore Act. It also directs the reader to various sections of the Offshore Act for certain other definitions used in the Regulations.

Part 2 - Well operations management plans

Regulation 2.1 - Request for acceptance of well operations management plan

This Regulation requires a titleholder who wishes to carry out a well activity to submit to the Minister, for acceptance, a well operations management plan, at least 30 days prior to the commencement of the activity. The well operations management plan must be in writing and may apply to well activities for more than one well. The Regulation also allows the titleholder, subject to permission by the Minister, to submit a well operations management plan as two or more documents or as staged
documents, each staged document corresponding to particular stages of the well activity. If permission has not been given, the titleholder must submit the entire well operations management plan.

Regulation 2.2 - Contents of well operations management plan

This Regulation details the general requirements and mandatory contents of a well operations management plan to ensure that industry is made aware of its responsibility to conduct well activities and manage the identified risks, in accordance with sound engineering principles and good oil-field practice. A well operations management plan may include material other than that outlined in the Regulation.

Regulation 2.3 - Reasons for acceptance of well operations management plan

This Regulation specifies the matters to be taken into account by the Minister in accepting a well operations management plan.

Regulation 2.4 - Decision on well operations management plan

This Regulation requires the Minister, within 30 days of submission of a well operations management plan by a titleholder, to accept the whole or a part of the plan, reject the plan or notify the titleholder that the Minister is unable to make a decision without further assessment of the plan. Once a decision is made to accept the whole or a part of the plan or reject the plan, the Minister must inform the titleholder, in writing, of the decision, as soon as practicable. If the decision is to reject the plan (in full or in part), the Minister is required to provide reasons. If the Minister is unable to make a decision, it must include in the notification a process for further consideration of the plan. If the Minister accepts a well operations management plan subject to certain conditions, then the titleholder must be notified of the terms of those conditions and the reasons for imposing them. The Minister must also notify, as soon as practicable after making a decision, the effect of Regulation 3.6.

Regulation 2.5 - Status of well operations management plans

This Regulation provides that if a titleholder has been given permission to submit a well operations management plan in parts and if the Minister has accepted one or more parts of the well operations management plan, the first part of the plan that the Minister has accepted is considered to be an accepted well operations management plan in its own right. A part submitted after the acceptance of the first part is considered to be a variation of the accepted plan. The Regulation also allows the Minister to accept a well operations management plan as a replacement for an accepted well operations management plan. In this case, the previous accepted plan ceases to have effect.
Part 3- Variation of a well operations management plan

Division 1 - Variation by titleholder

Regulation 3.1 - Request for variation of accepted well operations management plan

This Regulation allows a titleholder who wishes to vary an accepted well operations management plan to submit a written variation of the plan to the Minister, for acceptance. The Minister must notify the titleholder that the accepted plan is not varied unless the Minister accepts the variation.

Regulation 3.2 - Decision on request for variation

This Regulation provides that after submission of a variation of an accepted well operations management plan by a titleholder, the Minister must, as soon as practicable, accept the variation, reject the variation or notify the titleholder that the Minister is unable to make a decision without further assessment of the variation. Once a decision is made to accept or reject the variation, the Minister must inform the titleholder, in writing, of its decision, as soon as practicable. If the Minister is unable to make a decision, it must include in the notification a process for further consideration of the variation. The Minister may accept a variation subject to any conditions decided by the Minister. In this case, the Minister must notify the terms of those conditions and the reasons for imposing them. The Minister must also notify, as soon as practicable after making a decision, the effect of Regulation 3.6.

Division 2 - Variation at request of responsible Commonwealth Minister

Regulation 3.3 - Requirement to vary well operations management plan

This Regulation provides the Minister with discretion to issue a written notice to a titleholder, requesting submission of a variation of an accepted well operations management plan. The notice must set out reasons for requiring the variation, identifying the proposed date of effect of the variation, and advise the titleholder of his/her rights to object under Regulation 3.4.

Regulation 3.4 - Objection to requirement to vary

This Regulation outlines the process by which a titleholder can object to a notice issued by Minister under Regulation 3.3. The titleholder must submit the objection, in writing, to the Minister, within 21 days after receiving the notice or a longer period if the Minister allows it, in writing. If the titleholder does not make an objection, the Minister must notify the titleholder of the effect of Regulation 3.6.
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Regulation 3.5 - Decision on objection

This Regulation provides that when a titleholder makes an objection under Regulation 3.4, the Minister must, as soon as practicable, accept the objection, reject the objection or notify the titleholder that the Minister is unable to make a decision without further assessment of the objection. Once a decision is made to accept or reject the objection, the Minister must inform the titleholder, in writing, of its decision, as soon as practicable. If the Minister accepts the objection, the titleholder must then give the original or modified variation to the Minister, as soon as practicable. If the Minister is unable to make a decision, it must include in the notification a process for further consideration of the objection. The Minister is obliged to notify the titleholder of the effect of Regulation 3.6.

Division 3 - Operation of well operations management plan

Regulation 3.6 - Commencement of well operations management plan and variations of well operations management plan

This Regulation specifies that the commencement day of a well operations management plan or a variation of the plan is the day on which the Minister accepts the plan or the variation.

Regulation 3.7 - Termination of well operations management plan

This Regulation specifies the conditions under which a well operations management plan terminates. The plan ceased to have effect when it is withdrawn by the titleholder or replaced with another well operations management plan; when the Minister has withdrawn its acceptance of the plan; or after five years from the acceptance of the plan, whichever day is the earliest. These conditions apply whether or not the well operations management plan has been varied since being accepted. As the existing well operations management plan ceases to have effect after five years from its acceptance, the titleholder will be required to submit another well operations management plan to the Minister at the end of the five year period.

Part 4- Requirements for specific well activities

Regulation 4.1 - Approval

This Regulation sets out the well activities that a titleholder must not commence without the approval of the Minister, and the required content of the titleholder's application for approval to commence any of these activities. As the specified activities would lead to the physical change of a wellbore, they could alter the well configuration. Given that, it would be undesirable to conduct these activities, without the Minister approval.
Part 5 - Withdrawal of acceptance of well operations management plan

Regulation 5.1 - Reasons for withdrawal of acceptance

This Regulation provides that the Minister may withdraw its acceptance of a titleholder's accepted well operations management plan, if the titleholder has not complied with the Offshore Act, the Regulations, a direction given under section 580 of the Offshore Act, or the accepted well operations management plan. This Regulation also provides to the Minister a discretionary power to withdraw acceptance for any other reason.

Regulation 5.2 - Notice of proposal to withdraw acceptance

This Regulation provides that if the Minister intends to withdraw its acceptance of a well operations management plan, it must notify the titleholder in writing of its intention at least 30 days prior to the intended withdrawal. The Regulation also detailed the content of the notice of withdrawal. The notice must specify a date by which the titleholder may provide any information to the Minister to be taken into account in the decision whether to withdraw acceptance.

Regulation 5.3 - Decision to withdraw acceptance

This Regulation details the process for withdrawal by the Minister of an accepted well operations management plan, following its notification of withdrawal under Regulation 5.1. The Regulation also specified the circumstances under which the Minister must not withdraw acceptance.

Regulation 5.4 - Relationship between withdrawal and other provisions

This Regulation specifies that the Minister may withdraw its acceptance of a well operations management plan, irrespective of whether the titleholder has been convicted of an offence due to its failure to comply with a provision of the Offshore Act or the Regulations.

Part 6 - Titleholders general duties

Regulation 6.1 - Undertaking activity

This Regulation provides that a titleholder must not undertake a well activity in an offshore area unless the titleholder has an accepted well operations management plan. The Regulation also imposes a penalty of 50 penalty units for non-compliance. An offence against this Regulation is an offence of strict liability.
6.

**Regulation 6.2 - Compliance with accepted well operations management plan and Regulations**

This Regulation specifies that a titleholder must carry out well activities for the well in accordance with its accepted well operations management plan and any requirements set out in the plan. The Regulation also specifies a penalty of 50 penalty units for non-compliance. An offence against this Regulation is an offence of strict liability.

**Regulation 6.3 - Impact of well integrity hazard or increased risk not identified in well operations management plan**

This Regulation provides that a titleholder must not commence or continue a well activity, when there is an identified well integrity hazard or a significant increase in an existing risk in relation to the well. The Regulation also specifies a penalty of 50 penalty units for an offence against this Regulation. It is a defence to a prosecution under this Regulation if the defendant has a reasonable excuse. An example of a reasonable excuse would be not to cease drilling immediately because of the reasonable belief that an immediate stop could make the hazard worse.

**Part 7 – Authorisation to explore for greenhouse gas storage formation and greenhouse gas injections site**

Regulations 7.1, 7.2 and 7.3 provide the authorisation for a holder of a petroleum title (ie petroleum exploration permit, petroleum retention lease or petroleum production licence) to seek approval from the Joint Authority (the responsible State Minister and the responsible Commonwealth Minister for offshore petroleum activities under the Offshore Act) to carry out greenhouse gas exploration activities (ie explore for potential greenhouse gas storage formations and injection sites) within the area of the petroleum title.