

Plenary Session 1: Earning and Protecting our licence to operate

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Introduction

Before I start I would like us all to pause as a mark of respect for the two men on board the Stenna Clyde that lost their lives a little over two weeks ago, here in Australia and for us to reflect on other incidents where people have been lost or injured, particularly those which have affected us personally and the lessons learned.

I am very pleased to be part of today's discussion.

The fact that licence to operate is the topic of the first plenary session for this year's **SPE/APPEA international conference on Health, Safety and Environment** reflects the priority that industry understandably places on earning and retaining the 'right' to conduct petroleum activities in an increasingly complex setting.

It's a complex topic and one not easily defined. Rather than seek to characterise NOPSEMA's approach, I'd like to pose some questions to help illustrate the continuing evolution of the concept of 'licence to operate' and its challenges.

Questions from the past

Unfortunately, history is littered with examples of operators who have jeopardised their social license to operate by failing to effectively manage risk – with catastrophic consequences.

Numerous investigations have examined in detail the technological aspects of these failures and substantive inquiries and reports have documented what went wrong. But an important element is frequently lacking. That is - the **human and organisational factors** in play are **not** always clearly identified.

We may understand the errors that were made without understanding why people did what they did.

Experience reveals a number of root causes common to major failures in the offshore petroleum industry:

- **competence of the operator**
- **decision making, particularly around design**
- **management of change**
- **verification of safety critical barriers**

The fact that the same root causes crop up so frequently, across a range of operating environments, is both confronting and bemusing.



It invariably prompts some bigger questions, like:

“Why are some operators seemingly unable to learn from mistakes?”

Fundamental to the process and benefits of examining lessons learned is the availability and quality of information about any mistakes – not only the technical failures identified after the incident, but what other factors were also at play.

What is stopping industry from effectively sharing their experiences?

By sharing, I mean providing sufficient detail about the incident as soon as possible after the incident to maximise the learning outcomes.

In considering continuous improvement, regulators may ask, “what else is complicating industry’s ability or willingness to apply the lessons of risk management failures?” For example,

- Is it an increasingly litigious business environment? (where commercial considerations override the imperative to share information and contribute to safety lessons)
- Is it the growth of corporate manslaughter provisions? (where operators seek to prioritise legal protection over the risk management objectives of information-sharing)
- concerns over reputation and competitive advantage? (where a fear of adverse publicity outweighs the long-term advantages of transparency, accountability and exemplary behaviour)

From a technical perspective, a persistent quandary is: **“What are the barriers to the uptake by industry of best available or new technology?”**

What is impeding the uptake of inherently safer design and failsafe approaches to health, safety and environmental risks?

- Is it concern about losing commercial, competitive advantage?
- Does it relate to presumptions about the prospects of gaining regulatory acceptance?

Meeting evolving expectations

In seeking to identify **how best to reduce risk** in offshore petroleum activities, it is instructive to examine what **motivates industry** to adopt effective risk management.

For **society**, it’s pretty **straightforward**: the creator of a risk bears the responsibility for managing the risk. The effective management of the risks that an organisation creates determines their “social licence to operate”.

But in **practice**, the transaction is more **complex**.

“Licence to operate” means different things for different stakeholders, be it obtaining regulatory approvals or demonstrating corporate social responsibility.



Deciding if an organisation should be granted such a licence, and if and when such a licence should be revoked, may then become **society's expectation of governments or regulators**.

Common causal factors of recent major offshore incidents, such as BP Macondo and the PTT EP Montara incident, include:

- decision making (what informed the decisions, who made them?);
- managing change (capacity to identify the need where change is needed and how to implement it);
- situational awareness (the factors unique to the operational environment); and
- communication (the tools used to inform and receive feedback from stakeholders).

These are invariably issues that confront a regulator, in performing its functions to **reduce risk**, both to humans and the environment, and **help optimise safety** for offshore workers.

Should **regulators** be interested in whether a potential operator has the capabilities to manage risk in a way that covers:

Critical elements? (monitoring for hazards, and beyond that, knowing what to look for); and,

Actual elements? (responding to hazards effectively, by knowing what to do, being capable of doing it);

Further, does an **operator** have the **dynamic capabilities** to deal with incidents covering:

Factual elements? (learning what happened, knowing how it happened)

Potential elements ? (anticipating hazards, identifying what might happen)

Should regulators be actively interested in establishing if an operator has the:

Organisational capital (systems);

Human capital (people with knowledge, skills and experience); and

Social capital (relationships among people);

that would enable them to effectively monitor, respond, learn and anticipate?

And should regulators be attempting to assess if a potential operator has an appropriate amount of organisational capital (systems) in place indicating they can effectively monitor, respond, learn and anticipate prior to granting them a licence to enter the regime (for NOPSEMA this currently would be registration as a facility operator)?

Should regulators also then be periodically assessing operators are continuously improving all three types of capital to ensure they are also improving their capabilities to monitor, respond, learn and anticipate?



More fundamentally - should senior leaders in organisations be asking the same questions with a goal of continuous improvement?

Conclusion

There are challenges inherent in assessing fitness to operate and withholding licenses from those who don't measure up.

Fitness for duty programs are necessary, but difficult to administer.

There are many potential approaches: one might be to require new operators to describe their capabilities in each of the key areas (a type of management case) and have a senior executive explain why the company should be authorized to operate.

Legally and politically, it is difficult to deny operating rights unless there are glaring weaknesses. However, just going through this type of process could ensure that senior management understand their safety and environmental obligations.

Some jurisdictions (e.g. US) have had a disqualification process for problem operators for about 20 years.

NOPSEMA's equivalent is withdrawal of a safety case acceptance or operator nomination. The most useful part of these processes has been the probationary step that precedes disqualification. This is very effective in helping companies understand that their operating rights are in jeopardy, and that they better get their act together!

Should regulators be refusing to grant a prospective operator a licence to operate if they cannot demonstrate they will have the capabilities to effectively manage the risks they create?

Considering these questions involves **more hard work** and the solution may never be clear.

What **is clear** is that if we fail to grasp these questions and fail to face up to the challenge and complexities of current offshore petroleum activities, we will **once more** be examining another major offshore incident.

When that time comes, the questions may be **simple** - where, who, when and how much –and the **consequences for us all, much tougher to face.**