

# Failure to comply with environmental management requirements due to titleholder asset ownership changes

## What happened?

Recent NOPSEMA inspections have identified that a change in the titleholder conducting the activity has also resulted in a change to the manner in which environmental impacts and risks of the activity are managed. A transition of titleholder is likely to change the manner in which environmental impacts and risks are being managed. This may be due to different corporate policies, procedures, capabilities and competencies, the status of the petroleum reservoir, the status of the asset, and the ownership model.

Over the last 12 months, there have been two circumstances where sales and purchasing processes have continued contrary to NOPSEMA's advice about how to determine whether a proposed revision of the environment plan (EP) is required and when it should be submitted. After the change in titleholder has occurred NOPSEMA has found the incoming titleholders to be acting contrary to the EP in force for the activity. This resulted in managing the activity beyond what had been determined to be ALARP and acceptable levels of environmental impact and risk. These failings led to issuance of a General Direction, an environmental prohibition notice and multiple inspection recommendations.

In general NOPSEMA has identified that incoming titleholders have failed to appropriately consider whether the changes that accompany a change in titleholder and/or sale of asset would result in the incoming titleholder acting contrary to the accepted EP. Some of the specific failings have been:

- assuming that the implementation strategy, including the oil spill response arrangements, can remain unchanged when there is a change in titleholder
- failing to consider the financial assurance requirements and how they change as a result of a change in titleholder
- incorrectly identifying that the incoming titleholder can change operations in a way that means environmental performance outcomes and environmental performance standards in the in-force EP would not be met
- failure to properly consider a series of increases in environmental impacts and risks
- inadequate justification for altering or removing controls measures or changing the way they are implemented.

Inspectors found that management of change processes and procedures described in EPs were insufficient to address the complexity arising from the transfer of asset ownership and subsequent changes to the EP. In particular, management of change procedures did not identify all legislative requirements that are to be considered in the event of such a change. Inspectors concluded that incoming titleholders did not implement an appropriate management of change process, which in some cases resulted in flawed conclusions regarding the need to submit a revision to the accepted EP.

## What could go wrong?

NOPSEMA is concerned that, in some circumstances, a change to the titleholder conducting the activity may result in environmental impacts and risks not being managed to ALARP and acceptable levels. NOPSEMA is also concerned that incoming titleholders' due diligence fails to identify and properly assess implications of all relevant regulatory requirements, misjudging the time and costs associated with compliance prior to finalising the asset sale. As a result, an incoming titleholder undertaking the activity may fail to comply with the accepted EP or:

- fail to meet the set levels of performance for protection of the environment which in turn may result in a significant (and potentially immediate) threat to the environment
- undertake an activity contrary to the Environment Plan in force

- unjustifiably reduce timeframes or remove arrangements for implementation of control measures necessary for the timely control of a major oil spill
- emit or discharge harmful substances in excess of permitted quantities which may significantly affect the marine environment
- being unaware of, or unable to implement controls required to ensure that impacts and risks to the environment are acceptable.

## Key lessons

- Incoming titleholders' should make themselves aware of the environmental management obligations in the in force EP and relevant legislation, before acquiring an asset.
- Incoming titleholders should seek and heed NOPSMEA's advice in relation to how the law applies to their circumstance, to avoid non-compliance once they become the titleholder undertaking the petroleum activity.
- The determination of whether a revision to the EP is required should be made early in the asset purchasing process and should consider all regulatory requirements under Regulations 6, 7, 8 and 17<sup>1</sup>.
- Incoming titleholders should ensure that a new or revised EP provides adequately for the change in the titleholder conducting the activity.
- Companies looking to purchase and operate assets with environment plans in force for another titleholder to be undertaking the activity should not assume that management of change provisions within the EP accepted by NOPSEMA are sufficient to manage the change in titleholder undertaking the activity.
- The way to vary the conduct or management of an activity described in an in force EP is via submission and acceptance of a new EP or a proposed revision of an EP.
- Failing to adhere to regulatory requirements may result in enforcement action that requires the titleholder to comply with existing regulatory requirements (i.e. the in force unchanged EP) or could result in withdrawal of the accepted EP.

## The legislation

- Regulation 7 – Operations must comply with the accepted environment plan
- Regulation 17 – Revision because of a change, or proposed change, of circumstances or operations
- Regulation 17(7) – If a change in titleholder will result in a change in the manner in which the environmental impacts and risks of an activity are managed, the new titleholder must submit a proposed revision of the environment plan for the activity as soon as practicable.

## References

NOPSEMA Environment Plan Assessment Policy – Section 6

<https://www.nopsema.gov.au/assets/Policies/A343085.pdf>

## Contact

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<sup>1</sup> Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009.