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The Hon Martin Ferguson AM MP
Minister for Resources, Energy and Tourism
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Dear Minister

Environmental Regulation of the Offshore Petroleum Industry

I refer to my letter of 15 June 2012 in which I outlined a number of the industry's concerns with regard to the implementation of the new offshore environmental approvals regime.

As noted in that letter, the industry continues to support the objective of achieving sound regulatory oversight of industry environmental practices and establishing NOPSEMA as an effective offshore regulator. However, the management of the transition to NOPSEMA acquiring responsibility for environmental management of the offshore industry has posed serious challenges for the industry. In some cases, companies requiring approval for Environment Plans (EP's) have incurred substantial costs and delays, with implications for pre-existing permits and work program commitments.

While transitional issues were to be expected and in some cases could be attributed to the need for companies to adapt their practices to the new regime as much as to the regulator, we believe that now is an appropriate time to take stock and to focus on issues which can now be seen to be material rather than transitional.

The purpose of this letter is to:

- Report the industry's continuing concerns with the regulatory burden and approach being taken by NOPSEMA to the assessment of EP's;
- Offer some constructive suggestions for reform to the applicable environmental regulations; and
- Support further reforms to reduce the duplication and double handling of environmental assessment and approval processes.

Our suggestions for reform are informed by the industry's practical experience of the first eleven months of operation of the regulations.

1. EP Assessments

Through the third quarter of 2012, industry has generally reported a more constructive and pragmatic level of engagement with NOPSEMA compared to the

first six months of the year. This followed a significant investment of time and resources by the industry in understanding and meeting NOPSEMA's expectations with regard to the development of EP's.

APPEA has continued to work closely with NOPSEMA on specific issues relevant to the development of EP's. In August, APPEA collaborated with NOPSEMA to deliver a major workshop on the required content of EP's. Arising out of that workshop, a number of priorities were identified for collaborative action or clarification. In addition, the APPEA Environment Committee has established working groups to achieve strategic solutions and industry alignment on technical areas such as credible oil spill scenarios and oil spill modelling methodologies.

In more recent months, however, the level of engagement and progress appears to have effectively reversed. Three specific areas of concern have emerged:

- EPs are being rejected for what appear to be relatively trivial and immaterial requirements – particularly with regard to oil spill contingency planning and ecological monitoring. In some cases, EP submissions by the same operator have been accepted for one drilling program but rejected for another drilling program using the same rig and operational method – with no material differences to risks, objectives, mitigation measures, systems or procedures.

- A concern that NOPSEMA is "raising the bar" with each EP and is insufficiently transparent in its decision-making. Rather than fixing simple problems (e.g., differences in terminology between an EP and an Oil Spill Contingency Plan) through discussion, these matters are being used as grounds for refusal or inability to make a decision.

- An increasing range of activities are regarded by NOPSEMA as requiring the development of an EP. This is particularly evident in the case of exploration activity where increased time is being required to plan and obtain the necessary approvals. Preparatory work (such as geotechnical surveys to support further regulatory approval applications) is considered by NOPSEMA to require an EP to proceed. In industry's view, this draws the range of activities covered by EP's far beyond what we understand the legislation is intended to address. There is no additional environmental benefit in undertaking an EP for this type of activity. It has real implications for other activities that support oil and gas exploration such as baseline surveys and work in supply bases. If taken to its logical conclusion, it would imply that any activity in support of petroleum exploration would require an EP (e.g., supply base, helicopter base and head office activities).

The resulting EP regulatory burden is having a major effect on industry's ability to deliver projects on time and on budget, with no significant improvement to environmental performance. Even experienced and well regarded operators with global corporate standards and strong performance are experiencing difficulties. Indeed, some operators advise that receiving EP approvals is proving to be the biggest risk to maintaining budget and schedule. The regulatory burden is driving major increases in standby drilling rig costs and internal resourcing of dedicated environmental specialists and stakeholder managers.

We met last week with NOPSEMA to discuss the above matters and will continue to maintain the dialogue. It is worth noting, however, that the problems being experienced are with EP approvals. There is no widespread experience of similar difficulties with Safety Case and WOMP approvals.

2. Amendments to Environmental Regulations

Industry supports the aim inherent in the Environment Regulations of making provision for a performance/objective based EP framework that places the onus on industry to demonstrate that the risks of an incident are reduced to "as low as reasonably practicable" (ALARP). Notwithstanding our concerns with the application of this principle by NOPSEMA (to date), we believe this is a better regulatory foundation than a prescriptive regime.

However, we believe that a contributing factor to the extended reach of the approvals process is the broad scope of the regulatory coverage. This has in part contributed to the difficulties experienced in transitioning to the new regime. Similarly, certain specific aspects of the environmental regulatory regime that have no equivalence in the safety regulatory regime appear to be contributing to unique difficulties being experienced with the environmental regime.

In our view, there are a number of opportunities for amendments to the Environment Regulations which could improve the focus of the regime on significant or material environmental risks and the reasonableness of an EP to the nature and scale of the regulated activity; other changes could improve the functioning of the environmental regime compared to the safety regime:

- The definition of "petroleum activity" is too broad and does not contain a significance threshold for environmental impact. The reach of the EP regime is therefore wide and captures many low risk activities
- Focus on significant risks is preferred to assessment of all environmental impacts and risks
- Having two distinct yet interrelated risk requirements ("acceptable level of risk" and ALARP) has the potential to cause confusion and overly complicate the EP risk assessment process. It is also not consistent with the Safety Regulations
- Development of standardised EPs for certain activities would streamline the EP regime. A similar approach could be adopted for oil spill contingency plans (OSCPs)
- The broad and onerous requirements for consultation with any person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plans. The operator is also required to comprehensively report on those consultations.

These opportunities for reform are explained in greater detail in **Attachment 1: Proposed Areas of Amendment to Environmental Regulations.**

We are aware that the Department of Resources, Energy and Tourism (RET) is undertaking a review of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations* and that an Issues paper will be released in December. We will participate fully in that process but at this stage wanted to bring these reform areas to your attention.

3. Duplicative Environmental Approvals Processes

There remains a high level of overlap and duplication in regulation covering the Australian oil and gas industry – between Federal Government agencies and between the Federal and state governments. This is particularly the case in regard to environmental approvals – with overlaps between NOPSEMA, SEWPaC, AMSA and a range of state regulatory bodies.

APPEA therefore strongly supports the Council of Australian Governments (COAG) process initiated in April to support a new regulatory and competition reform agenda aimed at lowering costs for business and improving national competition and productivity. We note that a key objective is the development of reforms to reduce the duplication and double handling of environment assessment and approval processes.

Oil Spill Contingency Planning (OSCP)

The prevention of oil spills remains a critical priority. It is addressed throughout the life cycle of all exploration, drilling and production activities and is achieved by sound design, construction and operating practices and facility maintenance and integrity. It must be backed up by world class emergency and incident preparedness and response capacity, including the capacity to plan for and respond to oil spills. The OSCP is a key part of this capacity.

Currently, multiple government stakeholders are involved in the development, acceptance and approval of OSCP's. In some cases, five different State and Commonwealth bodies may review and consult on a single OSCP in Commonwealth waters:

- The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has legislative responsibility under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) to audit and accept OSCP's.
- The Australian Maritime Safety Authority (AMSA) has responsibility for *Australia's national plan to combat pollution of the sea by oil and other substances* (the national plan). AMSA also requires review of OSCP's for proponents who consult with AMSA on national plan arrangements.
- The Department of Sustainability, Environment, Water, Populations and Communities administers referrals under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). For some years, conditions under the EPBC Act have required operators to develop and submit OSCP's to the Minister for approval.
- The Western Australian Department of Environment and Conservation has provided advice to the offshore petroleum industry, but they have indicated they are not resourced or able to provide any operational support in the field unless this is funded by industry.
- The Western Australian Department of Transport (DOT) and Department of Mines and Petroleum (DMP) have legislative responsibilities for coastal waters of Western Australia, where there is the potential for a spill to reach coastal waters and draw on state arrangements.

APPEA has established an Oil Spill Contingency Planning Working Group under the Environment Committee to tackle some key oil spill issues, including credible spill scenarios and modelling and operational response issues. We are also working with NOPSEMA to run a planning exercise with industry and key stakeholders at the major Australian oil spill conference, SPILLCON to be held in April 2013.

However, there is an over-riding need to establish mechanism(s) for reducing the regulatory burden and duplication on industry by adopting a clearer and more precise delineation of responsibilities between all appropriate government agencies.

EPBC Act Referrals

The Montara Inquiry Report identified the need to examine the scope for a single environment plan to meet the regulatory requirements of both the OPGGS Act and the EPBC Act (Recommendation 98). The Final Government response accepted that this was consistent with the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (the Hawke Review of 2009).

The industry continues to be directionally supportive of the goal of NOPSEMA being the authority for offshore environmental approvals with accreditation of NOPSEMA for all offshore environmental approvals under the EPBC Act.

We would appreciate the opportunity to understand how this can best be achieved. In order to meet the goal of reducing the duplication and double handling of environment assessment and approval processes, we believe that a number of matters will need to be effectively addressed. For example, the continuing requirement for approval of EPBC Act matters by the Environment Minister would need streamlining and certain legislative provisions and arrangements applying to the management of National Marine Parks (class approvals) would need to be clarified.

Finally, in light of the experience with the transition to NOPSEMA as the regulator of environmental management of the offshore industry, we would strongly recommend any such regulatory change would need to be managed in a phased-in and carefully considered basis.

4. Conclusion

We will continue to work with NOPSEMA on the matters raised in Section 1 of this letter and continue to engage with the Department of Resources and Energy on the reform areas outlined in sections 2 and 3 above.

I would appreciate the opportunity to discuss these matters further and will be in touch with your office to set up a meeting.

Yours sincerely

David Byers
CHIEF EXECUTIVE

cc: Drew Clarke, Secretary, DRET

Attachment 1

Proposed Areas of Amendment to Environmental Regulations

There are a number of opportunities for amendment to the Environment Regulations that could improve the focus of the regime on significant or material environmental risks and the reasonableness of an EP to the nature and scale of the regulated activity.

(a) Definition of 'petroleum activity' is too broad.

The current definition of petroleum activity contains two limbs. The first is if the activity is carried out under a petroleum instrument, other authority or consent under the *Offshore Petroleum and Greenhouse Gas Storage Act* (OPGGS Act) or Environment Regulations. So far, this appears to be operating appropriately in practice.

The second limb, however, is much broader and applies to an activity that is in relation to petroleum exploration or development and may have an impact on the environment (our underlining). The problem with this definition is that it does not contain a significance threshold for the environmental impact.

Under environmental legislation, such as *the Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) or the State *Environmental Protection Act 1986* (WA), Environment Impact Assessment and approval processes are only triggered where the activities proposed are likely to have a significant impact. This is also consistent with the environmental planning requirements in ISO 14001.

We believe that a similar significance or materiality threshold should be included in the definition of 'petroleum activity'. Narrowing the definition to activities which may have a significant impact on the environment will mean that low risk activities not undertaken pursuant to a petroleum instrument are not caught by the regime and can be progressed without an EP. This would not mean that such activities are unregulated. For example, the operator must generally comply with requirements of the OPGGS Act and other relevant legislation.

Guidance material should also provide further commentary on the interpretation of 'petroleum activity' and activities and works which are beyond the scope of the definition. NOPSEMA should provide examples of works and activities which it considers are not petroleum activities.

(b) Focus on significant risks preferred

Leaving the definition of 'petroleum activity' aside, there is inconsistency in the Environment Regulations as to what environmental risks are to be assessed.

For example, pursuant to Regulation 13(3), the EP must include details of the environmental impacts and risks for the activity and an evaluation of all the impacts and risks. However, paragraph (3A) states the following:

> For the avoidance of doubt, the evaluation mentioned in paragraph (3) (b) must evaluate all the *significant* (our italics) impacts and risks arising directly or indirectly from:
> (a) all operations of the activity, including construction; and
> (b) potential emergency conditions, whether resulting from accident or any other reason.

Amendments to the Environment Regulations could be made to better focus EP requirements and NOPSEMA's assessment on significant, rather than all, environmental impacts and risks. Replacing references to "the environmental impacts and risks" with "all significant environmental impacts and risks" in the following Regulations would achieve this purpose:

- the Acceptance Criteria at Regulations 11(1)(b) and (c);
- EP content requirements at Regulations 13(1) and (3); and
- implementation strategy requirements at Regulation 14(3).

(c) 'Acceptable level' of risk unnecessary and confusing

There is no requirement that an operator/ titleholder demonstrate activities are to an 'acceptable level' of risk under the Safety Regulations or Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011. This criterion in Regulation 11(1) of the Environment Regulations is therefore inconsistent with the approach to other regimes under the OPGGS Act. It is also arguably duplicative of the ALARP criteria.

Having two distinct yet interrelated risk requirements has the potential to cause confusion and overly complicate the EP risk assessment process. Deletion of Regulation 11(1) (c) would clarify the requisite risk standard that operators must demonstrate in EP's and likely streamline the risk assessment process.

d) Development of standardised EPs for certain activities

There may be opportunities to streamline the EP regime for certain activities through the development of industry codes or standard EPs that are easily adapted to the particular circumstances of the activity.

A similar approach could be adopted for oil spill contingency plans (OSCPs). This appears particularly relevant for petroleum activities which present a low risk of spills, or where any spill event would be of low magnitude.

e) The broad EP consultation requirements

Under Division 2.2A of the regulations, the operator is required to consult with any person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plans. This covers a broad population with consequentially wide and onerous obligations for consultation.

Further, the operator is required to report voluminously on all consultations between the operator and any relevant person. The report is required to contain a summary of each response, an assessment of the merits of any objection or claim made, a statement of the operator's response to each objection or claim; and a copy of the full text of any response by a relevant person.

The requirement to consult widely and report voluminously combine to increase the cost and time required to prepare EP's and provide a fertile field for the Regulator being unwilling to accept the EP on the grounds that the consultation does not meet the requirements of Division 2.2A. Indeed, the scope and burden of the Division 2.2A requirement is evidenced in claims by certain community groups that they are being overloaded with requests for consultation. Some groups have submitted requests of operator companies for financial contributions or for full payment for costs associated with these enhanced consultative demands on their organisations.