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1 March 2013

Environment Regulations Review
Resources Division
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

Submitted via email 01/03/2013


Origin appreciates the opportunity to make a submission to the Review of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (OPGGS) to ensure that the regulations are a suitable basis for regulators to minimise impacts on the environment arising from offshore exploration, development, operation and decommissioning of petroleum and carbon storage activities and facilities. As a member of the Australian Petroleum Production and Exploration Association (APPEA), we have also contributed to the development of APPEA's submission to this review. Origin, as a Member of APPEA’s Environment and Exploration Committees, met on Wednesday 16th January 2013 to discuss and agree on the priority issues and approach to be addressed by a whole-of-industry submission to the review through APPEA. The industry perspective is represented by the APPEA submission which Origin supports.

Origin Energy is the leading Australian integrated energy company focused on gas and oil exploration and production, power generation and energy retailing. We are a leading producer of gas in Eastern Australia, operating a number of natural gas production facilities and petroleum exploration permits.

Since the responsibility for environmental regulation was transferred to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) on 1 January 2012, Origin has been working cooperatively with APPEA and NOPSEMA in seeking to clarify for industry the new Regulator’s interpretation and implementation of the Regulations. Origin Energy 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.

Recently, Origin has undertaken the process of seeking acceptance on Environment Plans (EPs) on six occasions and has incurred substantial costs and delays which have had implications for pre-existing permits and work program commitments. A number of similar challenges raised by industry are captured by the scope of this review. This submission process therefore provides industry with an opportunity to address, at least to some extent, a number of the challenges faced by industry as a result of the current interpretation of the Regulations.

The principal concern for Origin is the number of Acts and Regulations which are duplicated between Commonwealth, State and municipal governments in cases where
petroleum activities are of a size to interact with all three levels of government. It was our hope that the OPGGS Act (E) Regulation review would achieve a reduction in duplication between levels of government and Commonwealth Legislation; however, we have identified additional duplication and complexity particularly between the Environment, Biodiversity and Conservation Act (EPBC Act) and proposed amendments to the OPGGS Act (E) Regulation. While we seek to continually improve transparency and public confidence in our offshore projects, we have been experiencing increasing business risks and costs associated with meeting regulatory requirements in Australia that are complex, confusing and, at times, lead to conflicting outcomes. We welcome this review as one of the steps in reducing the inconsistency and confusion in the regulatory environment for offshore petroleum activities.

Objectives

Origin broadly supports the intent behind Option 1.1 to specifically include reference to the concepts of acceptable and ‘as low as reasonably practicable’ (ALARP) environmental impact and risk management. Where definitions already exist in the EPBC Act, i.e. Ecologically Sustainable Development (ESD), they should be readily cross-referenced and it would be inappropriate to add further confusion by introducing a ‘new’ definition in the revised Regulations.

Given the Regulator’s access to information from across the industry, we are of the view that it is the Regulator’s responsibility to undertake proper cumulative impacts and environmental risks assessments and not the operators as petroleum permits allow only discrete activities in multi-use zones.

Best practice and continuous improvement

Origin supports the proposed options that are designed to clarify the definitions of existing requirements (including Options 2.1, 2.2, 2.4, 2.7, 2.8). We note that the process and criteria for determining acceptability should be prescriptive to support an objective based Regulation, i.e. clear definition of the principles of ESD, legislative and other requirements, the receiving environment, operator policies and the views of stakeholders. Origin supports in part Option 2.6, specifically that the process and criteria for determining ALARP are clear and definitive to provide greater clarity and certainty.

We view the proposed change in Option 2.5 as having no clear added value, with the potential to create confusion through the identification and evaluation of ‘potential emergency conditions’.

The proposal in Option 2.9 to remove Regulations 29 and 29(A) recognises that the Regulations referenced may have been arbitrarily developed and do not have scientific merit. While Regulations 29 and 29(A) are prescriptive in nature and not necessarily appropriate in an objective based Regulation, it should be noted that this standard has been in effect since 2009 and facilities have been constructed or modified to meet and address these particular prescriptive regulations. It is recommended that the conditions be grandfathered for 25 years for existing facilities. The grandfathering of petroleum assets is common in many developed petroleum sectors including Commonwealth countries such as Canada.
Consultation and notification

Origin supports achieving greater transparency and public confidence in the industry and the work we do. We believe that the responsibility for consultation should rest with the operator/proponent and that stakeholders should be advised of any activities at the earliest opportunity. As such we are generally supportive of Option 3.1; however, we suggest that if Option 3.1 is adopted, it should replace the existing requirement for a summary document to be produced. Placing a review document for public consultation duplicates the existing process required under the EPBC Act. Having both a consultation document and a summary environment plan containing similar information does not add value and is duplication.

With respect to the issue of self-identification of stakeholders, Origin does not support the proposal under Option 3.2. In practice, Origin has from time to time encountered stakeholders who have ‘self-identified’. Where those stakeholders have a genuine interest (i.e. a ‘relevant person’), Origin has included them in its stakeholder consultation process and has documented the consultation. However, Option 3.2 poses a much more onerous assessment, reporting and justification process on the operator, with no consideration to the legitimacy of any ‘self-nominated’ persons and/or their claims, i.e. operators will be asked to respond or provide justification for potentially vexatious and illegitimate claims or complaints. We do not perceive an objective based Regulator as one that should be an arbiter of consultation with stakeholders. In the experience of Origin, the Victoria Department of Primary Industries also has an objective based petroleum regulatory framework which closely matches the Commonwealth Regulations administered by NOPSEMA, the approach to stakeholder issues is the opposite of NOPSEMA’s approach. The current arrangement where the Regulator (NOPSEMA) receives information on consultation undertaken by the operator are readily audited and queried is sufficient and effective, and as such, we do not support Option 3.3.

While the requirement for notification of start and end dates (Option 3.5) appears a sensible approach in theory, it is extremely difficult to achieve in practice. The discrete petroleum activities undertaken by Origin require highly specialised and expensive seismic vessels, drilling rigs and marine construction vessels. Globally there are very few of these vessels which cost from 500,000 dollars a day to several million dollars a day. Petroleum is a global business and securing these vessels and rigs to develop the Australian petroleum industry requires flexibility to bring the equipment to Australia. Origin has not been successful in contracting a vessel for our seismic surveys in the Otway Basin since 2010.

Reporting

We are of the view that the wording in the current Regulations are relevant and sufficient to address the reporting requirements. The options outlined in the Issues Paper are likely to result in additional burdens on operators with limited added value to the overall effectiveness of the Regulations. NOPSEMA is a full cost recovery agency in which their levies are allocated to assess the Environment Plan. Additional reporting to NOPSEMA increases the requirements for the Regulator to manage, assess and archive the supplied data. It is our view that the money is better spent engaging with industry through assessment and inspection.
Representation

While Origin is supportive of enhancing transparency, Option 5.1 appears to duplicate reporting requirements under the EPBC Act and is contrary to the Government’s objective of cutting ‘green tape’. Instead we would advocate for continuing and better collaboration between industry and the Regulator on the industry’s activities, utilising the funds garnered by the levies for assessment and inspection.

Duties and responsibilities of parties

The options in this chapter present a complicated set of proposed amendments that has the potential of increasing business risks and regulatory creep, with the added potential to increase costs. We question the value that these options will add to the overall effectiveness of the Regulations. Origin does not accept the description supporting the proposed options; the description is not balanced and does not include the net benefits to the environment that will be achieved by the Regulatory Amendments or clear description of the cost benefit analysis that is proposed.

Transparency

Information disclosure currently happens on a number of different levels and through multiple channels. These include industry peer reviewed papers, industry collaboration and stakeholder consultation. Documentation on offshore activities is published under the requirements of the EPBC Act and also summary Environment Plans are made available via NOPSEMA. The options proposed in the Issues Paper (7.1 – 7.7) add limited value to achieving greater transparency and in some instances, are likely to duplicate existing reporting.

Currently information is provided to Regulators on a required basis under the EPBC Act. An example is the Cetacean Monitoring System administered by the Australian Antarctic Division. In Origin’s experience, obtaining this information is very difficult and generally unusable. The levies collected by NOPSEMA for assessment and inspection of Environment Plans should be confined to their current areas of responsibility. Origin does not support the introduction of an undefined regulation requiring supply of scientific data.

The Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012 proposes a number of changes under the OPGGS Act. If passed, this will undoubtedly introduce much stricter due diligence and reporting, which will be scrutinised through the assessment and inspection of existing processes administered by NOPSEMA and paid for through the full cost recovery levies process. We are of the view that if this bill is passed, investigations and enforcement provisions should be reported by the Responsible Authority under the Act, and should not be incorporated as a requirement in the Regulation. On this basis, Option 7.6 is not supported.

Marine pollution incidents

Origin supports Option 8.1 which seeks to clarify and make consistent the terminology in the Regulations.

As current arrangements are fully auditable and supplied to the Regulator for inspection and review we are concerned that the proposed changes in Options 8.2, 8.3, 8.10 and 8.11 risks greater reporting requirements, (in particular the disclosure of sensitive commercial information) and also limits the flexibility for operators to respond
dynamically in real-time emergencies. These options introduce limited benefits to enhancing the effectiveness of the Regulations and exposes operators to significant, unbudgeted and indeterminate costs.

Options 8.4, 8.5, 8.8 and 8.12 are supported as they seek to clarify, but not add, to the existing requirements.

Alignment of terminology

Overall we support the intent to clarify definitions and terminologies used in the Regulations. Any amendment to the Regulations should mirror what is documented in the Act, specifically the definition of a petroleum activity should be limited to the exploration and production of hydrocarbons and not cover ancillary services (i.e. geotechnical surveys or environmental studies which are used to determine if an operator will undertake an exploration or production activity).

This includes the proposal to elevate the definition of ‘environment’ in the Regulations to the OPGGS Act and clarify sub-regulation 11(2) to ensure appropriate measures are in place to provide a proponent with reasonable opportunity to modify a submitted environment plan.

The objective of removing the need for approvals for activities which present low (negligible) environmental impact and risk and where enforcement is problematic is supported, consistent with the Government’s intent to reduce unnecessary regulatory burden.

Monitoring

Origin supports the introduction of the requirements of the Regulations to be reviewed to ensure that they capture monitoring activities to ensure ongoing compliance and assurances assessments which create a net environmental benefit from Origin’s Petroleum activity (Option 10.1). However, escalation in monitoring requirements can add significant burden to industry. Monitoring efforts should be commensurate with the scale and significance of the activity. We advocate for a proper cost-benefit analysis of impacts and further consultation with the industry be undertaken for any additional monitoring requirements proposed.

Life cycle

Origin agrees that early engagement between proponents and the Regulator can facilitate an open exchange of information. This has certainly been Origin’s experience where we engage with the Regulator, usually at the outset of the development of an environment plan. It is unnecessary to introduce additional obligation on operators as outlined in Option 11.1.

Compliance, enforcement and penalties

Origin supports the options to adjust the level of penalties to reflect community standards such that they are appropriate to the nature of the offences with which they are associated.
Government policy and guidance

Origin supports this option as it reduces the duplication in documentation submitted and streamlines the regulatory process.

Origin is fully supportive of the Council of Australian Governments’ (COAG) commitment to improving productivity through regulatory reform. Through the representation of our Managing Director, Mr Grant King, on the Government’s Business Advisory Forum, we are continuing to contribute to the review of reducing unnecessary red tape to lead to a more streamlined and efficient approach in regulation without compromising the quality of the regulation.

While the regulatory reforms are still in development, we are continuing to see duplication of environmental regulations for offshore drilling and field development activities occurring between the Commonwealth, regulated by NOPSEMA, and the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC). Depending on the location of a proposed activity, the situation could be further complicated by multiple regulators from the State Governments as well. Duplication, lack of clarity and confusion between the different regulations are continuing to add to the regulatory burden and costs of doing business.

We welcome the Government’s objective of reducing ‘green tape’ and facilitating regulatory reviews including this, as ways to improve the efficiency and effectiveness of the regulatory environment. It is prudent that proper cost-benefit analyses are undertaken on any proposed changes to ensure that impacts are accurately assessed. Changes should occur where there will be overall benefits to the industry, environment and the community. However, any business risks and costs associated with such changes should be fully quantified and understood to ensure that the ongoing viability of offshore activities in Australia are not undermined.

If you have any questions about this submission please contact Bob Meagher, Project/Technical Delivery Manager on 07 3037 7219 or email: Robert.Meagher@originenergy.com.au.

Yours sincerely

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