

Administrative Arrangement
Between
South Australian Environment Protection Authority (EPA)
And
Energy Resources Division, Resources and Energy Group, Department
for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE)

1. Scope of Administrative Arrangement

This Administrative Arrangement has been prepared for the purpose of satisfying the requirements detailed in paragraphs 5.1 and 5.3 of the Memorandum of Understanding between the Environment Protection Authority (EPA) and the Energy Resources Division of the Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE).

This Administrative Arrangement applies to activities administered by DMITRE under the South Australian *Petroleum and Geothermal Energy Act 2000* (PGE Act), referred to herein as 'regulated activities', and the *Petroleum (Submerged Lands) Act 1982* (SA), referred to herein as 'PSL Act activities'.

The following are regulated activities:

- (a) exploration for petroleum¹, geothermal energy, gas storage or another regulated resource²;
- (b) operations to establish the nature and extent of a discovery of petroleum, geothermal energy, gas storage or another regulated resource, and to establish the commercial feasibility of production and the appropriate production techniques;
- (c) production of petroleum or another regulated substance³;
- (d) utilisation of a natural reservoir to store petroleum or another regulated substance (including in a case where a trace element naturally occurs with the

¹ A naturally occurring substance consisting of a hydrocarbon or mixture of hydrocarbons in gaseous, liquid or solid state but does not include coal or shale unless occurring in circumstances in which the use of techniques for coal seam methane production or in situ gasification would be appropriate or unless constituting a product of coal gasification (whether produced below or above the ground) for the purposes of the production of synthetic petroleum.

² A naturally occurring underground accumulation of a regulated substance; or a source of geothermal energy; or a natural reservoir.

³ Petroleum, hydrogen sulphide, nitrogen, helium, carbon dioxide, and any other substance that naturally occurs in association with petroleum.

- petroleum or other regulated substance);
- (e) production of geothermal energy; and
- (f) construction and operation of a transmission pipeline for carrying petroleum or another regulated substance.

2. Training Requirements

DMITRE and the EPA will undertake any necessary training to facilitate a better understanding of any provisions of the Acts to which this arrangement applies.

3. Where Both DMITRE and EPA Have a Regulatory Role

There are a number of regulated activities for which the EPA, by law, has a regulatory role. This includes activities that require an environmental authorisation (works approval, licence, exemption) under the *Environment Protection Act 1993* (EP Act). In addition, the EPA may have a regulatory or advisory role in the development of trial projects associated with regulated activities (e.g. water flood field injection and water disposal trials).

Relevant EPA licensed activities are detailed in Schedule 1 of the EP Act and include (but are not limited to):

- Petroleum production or storage
- Discharges to marine or inland waters
- Chemical works
- Waste or recycling depots

Relevant exemptions may be from any mandatory provisions of an Environment Protection Policy such as (but not limited to) the Environment Protection (Water Quality) Policy 2003, the Environment Protection (Air Quality) Policy 1994 and the Environment Protection (Noise) Policy 2007.

Where environmental authorisations are issued under the EP Act, the EPA is solely responsible for the administration of these authorisations and ensuring that licensees meet the conditions of these authorisations.

4. Regulated Activity Referral and Approval Process

DMITRE will:

- Provide to the EPA, via the Mining and Petroleum Referrals email address (EPAMining&PetroleumReferrals@epa.sa.gov.au) an electronic copy of referral documentation such as:
 - Environmental Impact Report (EIR), Draft Statement of Environmental Objectives (SEO) and DMITRE's Environmental Significance Assessment (regulated activities); or
 - an Environment Plan (PSL Act activities); and
 - any other relevant documentation.
- Specify required timeframes for a response; and
- Provide details of a DMITRE contact officer.

The EPA will:

- Provide a written response to the referral documentation to the nominated DMITRE contact, with all endeavours to meet agreed timeframes; and
- Provide details of an EPA contact officer.

4.1. EPA's Assessment and Response to Referrals

The EPA's assessment and response to referral documentations will cover matters such as (but not limited to):

- | | |
|---------------|--------------------------------|
| ▪ Noise | ▪ Waste Management |
| ▪ Air Quality | ▪ Waste Water Management |
| ▪ Odour | ▪ Stormwater Management |
| ▪ Water | ▪ Bunding and Spill Management |

and

- Any significant issues that the EPA is aware of, which have not been raised in the EIR;
- Any additional objectives and assessment criteria that need to be included in the SEO; and
- In light of the information provided in the EIR and any other knowledge that the EPA considers relevant, recommended specific conditions of approval and requirements for inclusion in the SEO as part of the objectives and/or assessment criteria.

4.2. Low Impact Activities

Where proposed regulated activities are not covered by an existing approved SEO, and where DMITRE's preliminary environmental significance assessment of the proposed regulated activity (pursuant to section 98 of the PGE Act) results in a low impact classification;

DMITRE will:

1. Provide its preliminary environmental significance assessment to the EPA for agreement;
2. In support of this assessment, provide a copy of the relevant EIR and draft SEO and details of the criteria⁴ established for assessment of the environmental impact of regulated activities; and
3. Where the EPA agrees with DMITRE's low impact classification, DMITRE will consult with the EPA on the content of the EIR and draft SEO, in particular the adequacy of the objectives and assessment criteria.

The EPA will:

1. Where the EPA does not agree with DMITRE's low impact classification, the EPA will notify DMITRE of its concerns in writing as soon as practical, but no later than 20 business days after receipt of the referral; or
2. Where the EPA agrees with DMITRE's low environmental impact classification, the EPA will provide comment and recommendations on the EIR and draft SEO as indicated in Section 4.1 of this arrangement.

For low impact activities, the EPA will provide comments and recommendations on the EIR and draft SEO to DMITRE within **20 business days** of receipt of the referral.

4.2.1. Not referring low impact activities such as geophysical exploration, exploration drilling⁵ and preliminary survey activities to the EPA

Subject to proponents incorporating into their EIR and draft SEO documentation relevant conditions that have been agreed to by the EPA and DMITRE (and documented for reference), the EPA may agree that proposals for low impact regulated activities such as

⁴ <www.petroleum.dmitre.sa.gov.au> Go to Environment & Land Access, Environmental Regulation, Environmental Impact Classification

⁵ Includes initial and extended production tests.

geophysical exploration, exploration drilling and preliminary survey activities not be referred for assessment. Whilst the arrangement is active, the EPA will undertake periodic reviews of EIRs and approved SEOs published on the DMITRE website to ensure the agreed process is working effectively.

To commence or terminate this arrangement, the EPA will provide written confirmation from the Director, Regulation and Compliance, EPA. At this time, reference to the current agreed and documented conditions will be provided to DMITRE. Any subsequent changes to these conditions made by the EPA will be undertaken in consultation with DMITRE.

4.3. Medium Impact Activities

Where a regulated activity is classified as medium impact by DMITRE, DMITRE will seek the EPA's comments on the EIR and draft SEO during the relevant public consultation process for medium impact activities pursuant to section 102 of the PGE Act.

The scope of the EPA's comments and recommendations on the EIR and draft SEO for medium impact activities will be as indicated in Section 4.1 of this arrangement.

The EPA will provide comments and recommendations on the EIR and draft SEO to DMITRE within **30 business days** of receipt of the referral.

4.4. High Impact Activities

Where a regulated activity is classified as high impact by DMITRE, DMITRE will seek concurrence with the Department of Planning, Transport and Infrastructure (DPTI) on its preliminary environmental significance assessment. In accordance with Part 12 of the PGE Act, if DPTI agrees with the high impact classification, the proposal will be referred for assessment under Part 8 of the *Development Act 1993* (SA).

DMITRE will remain as the principal agency facilitating consultation on the activity proposal unless DPTI advises otherwise. In seeking comment from the EPA, DMITRE will provide a copy of the relevant EIR and draft SEO to the EPA.

When an application is of major social, economic or environmental importance, the DPTI will be the principal agency for facilitating consultation on the activity proposal.

The EPA's comments and recommendations on the EIR and draft SEO for high impact

activities will be as indicated above in Section 4.1. This is irrespective of which agency (DMITRE or DPTI) facilitates the consultation, assessment and approvals process.

Subject to the classification of the referral, provisions under the Development Act would define an appropriate consultation period.

5. PSL Act Activity Approval Process

For all PSL Act activities regulated by DMITRE, DMITRE will provide to the EPA for comment a copy of the relevant Environment Plan (EP) prepared and submitted by the licensee as well as DMITRE's assessment of the EP.

The EPA's comments and recommendations on the EP will be consistent with Section 4.1 of this arrangement.

For PSL Act activities, the EPA will provide comments and recommendations on the EP to DMITRE within **20 business days** of receipt of the referral.

6. Incident Reporting Requirements

6.1. DMITRE Incident Reporting Requirements

Section 85 of the PGE Act creates two categories of incidents:

1. Serious; and
2. Reportable.

Serious incidents need to be reported to DMITRE as soon as practicable (typically within 24 hours) and followed up by a detailed report within 3 months of the date of the incident. Reportable incidents must be reported to DMITRE on a quarterly basis. The required content of these reports is specified in Regulation 32 of the PGE Act.

Serious Incidents

A serious incident is defined⁶ as one arising from activities conducted under a licence in which:

- a) *A person is seriously injured or killed; or*
- b) *An imminent risk to public health or safety arises; or*
- c) *Serious environmental damage occurs or an imminent risk of serious environmental*

⁶ PGE Act, s85

- damage arises; or*
- d) *Security of natural gas supply is prejudiced or an imminent risk of prejudice to security of natural gas supply arises; or*
 - e) *Some other event or circumstance occurs or arises that results in the incident falling within a classification of serious incidents under the regulations or a relevant statement of environmental objectives.*

Reportable Incidents

A reportable incident is defined⁷ as the following incidents (other than a serious incident) arising from activities conducted under a licence:

- a) *an unintended escape of petroleum, a processed substance, a chemical or a fuel that affects an area that has not been specifically designed to contain such an escape; or*
- b) *an incident identified as a reportable incident under the relevant statement of environmental objectives.*

Pursuant to Regulation 12(2) of the PGE Act, the draft SEO must identify the events which could arise from the relevant regulated activities and if not properly managed or avoided cause a serious or a reportable incident to occur. All approved SEOs found on the DMITRE website environmental register contain definitions of such events.

6.2. EPA Reporting Requirements

Section 83 of the EP Act states:

Notification where serious or material environmental harm caused or threatened

Where an incident occurs so that serious or material environmental harm from pollution is caused or threatened in the course of an activity undertaken by a person, the person, as soon as reasonably practicable after becoming aware of the incident, notify the Authority of the incident, its nature, the circumstances in which it occurred and the action to deal with it.

Material Environmental Harm

Environmental harm⁸ is considered to be material environmental harm if:

⁷ PGE Act, s 85; PGE Regs, reg 32

⁸ EP Act, s 5

- (i) *it consists of environmental nuisance of a high impact or on a wide scale; or*
- (ii) *it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely environmental nuisance) that is not trivial; or*
- (iii) *it results in actual or potential loss or property damage of an amount or amounts in aggregate, exceeding \$5 000*

Causing material environmental harm by polluting the environment (intentionally, recklessly and with knowledge, or not) is also an offence and carries significant financial penalties for both a body corporate and natural persons, again with natural persons facing criminal prosecution and potential imprisonment⁹.

Serious Environmental Harm

Environmental harm is considered serious environmental harm if:

- (iv) *it involves actual or potential harm to the health and safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; or*
- (v) *it results in actual or potential loss or property damage of an amount or amounts in aggregate, exceeding \$50 000*

A person who pollutes the environment intentionally or recklessly and with the knowledge that environmental harm will or might occur is guilty of the offence of causing serious environmental harm¹⁰. If a person causes serious environmental harm by polluting the environment (no intent, recklessness or knowledge necessary), this is also an offence. Heavy monetary penalties apply for both a body corporate and natural persons, with natural persons also facing criminal prosecution and possible imprisonment.

Notification of site contamination of underground water

Section 83A of the EP Act states:

A person to whom this section applies must notify the Authority in writing as soon as reasonably practicable after becoming aware of the existence of site contamination at

⁹ EP Act, s 80

¹⁰ EP Act, s 79

the site or in the vicinity of the site (whether arising before or after the commencement of this section) that affects or threatens water occurring naturally under the ground or introduced to an aquifer or other area under the ground.

The notification must—

- (a) describe the location of the site contamination sufficient to identify it; and*
- (b) include the information known to the person about the nature and extent of the site contamination.*

For the purposes of this section—

- (a) a person is not required to notify the Authority of a matter if the person has reason to believe that the matter has already come to the notice of the Authority or an officer engaged in the administration or enforcement of this Act; but*
- (b) a person is required to notify the Authority of a matter despite the fact that to do so might incriminate the person or make the person liable to a penalty.*

A notification given by a person in compliance with this section is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement)

6.2.1. Conditions on EPA licenses regarding reportable incidents

In addition to obligations that exist under sections 83 and 83A of the EP Act, licences issued under the EP Act include a note which requires incident reporting as follows:

“The Authority (EPA) must be notified as soon as reasonable practical but in any case within two hours of becoming aware of an incident which results in the release of solid, liquid or gas (or a combination thereof) that is not specifically authorised by an environmental authorisation and is not trivial”

Note: ‘Not trivial’ is defined for hydrocarbons as any uncontained loss of hydrocarbon greater than 200 litres to land, or any volume to water or a watercourse.

6.3. Licensee Reporting - EPA / DMITRE Protocol

Where DMITRE and EPA both licence an activity, site or facility, licensees are required to

report incidents to both DMITRE (Serious Incident Report Number 08 8463 6666) and the EPA (EPA Hotline 1800 100 833), as specified in licences and authorisations.

If a regulated or PSL Act activity is licensed solely by DMITRE, licensees may report to DMITRE only. If the incident is deemed serious or material in accordance with section 83 and 83A of the EP Act, and relates to or is likely to relate to any of the issues detailed below, DMITRE will endeavour to advise the EPA within 2 hours of being notified (EPA Hotline 1800 100 833). DMITRE will also inform licensees of their obligations to report the incident to the EPA.

Incidents involving the following issues are of interest to the EPA:

- Air quality
- Noise
- Odour
- Radioactive material spills
- Hydrocarbon or chemical spills to land or waters (including contamination of soil)
- Impacts to waters – surface and subsurface (i.e. groundwater)

When reporting an incident to the EPA, whether by the proponent or DMITRE, the following information is to be provided:

- name of person reporting and who they represent
- contact details of person reporting
- location of incident
- description of incident
- date and time
- how the incident occurred
- investigations carried out to date
- action taken or proposed action taken to remediate/clean up
- action taken or proposed action taken to avoid recurrence

Where the EPA is first notified of an incident relating to a regulated or PSL Act activity, the EPA will endeavour to advise DMITRE (Serious Incident Report Number 08 8463 6666) of the details within 2 hours of notification. The EPA may also advise the person reporting to notify DMITRE if it is obvious that the incident falls under the PGE Act or PSL Act definitions.

6.4. Incident Definitions in SEO

For regulated and PSL Act activities covered by an SEO, during the relevant consultation process the EPA will suggest any required changes to incident definitions to ensure they reflect the three tiers of environmental harm as defined in the EP Act.

7. Communication and Response to Environmental Incidents

7.1. Agency to take Lead Role Following an Incident

It is agreed that the lead regulatory role in terms of this Administrative Arrangement means setting the objectives and assessment criteria detailed in the SEO, and in the case of non-compliance, taking relevant enforcement action. Where the lead role is shared between DMITRE and the EPA, then the setting of the objectives and assessment criteria and any decision on enforcement action is made through consultation between both parties.

For incidents related to regulated activities and PSL Act activities, it is agreed that the following agency(s) will take the lead regulatory role:

Incident Type	Agency
Hydrocarbon and/or chemical spill	DMITRE & EPA
Formation water disposal	DMITRE & EPA
Water flood oil field injection	DMITRE & EPA
Oily sludge treatment and disposal	DMITRE & EPA
Waste management - waste depots and land fill	EPA
Surface water resource impacts	DMITRE & EPA
Downhole well incident	DMITRE
Groundwater contamination	EPA
Land disturbance - production activities	DMITRE & EPA
Land disturbance - exploration activities	DMITRE
Facility and pipeline construction and operation	DMITRE
Heritage impacts	DMITRE
Public safety	DMITRE

Security of gas supply	DMITRE
Vegetation disturbance	DMITRE
Radioactive material - storage and disposal	EPA
Odour	EPA
Noise	EPA
Air emission	EPA

For authorisations under the EP Act, the EPA has the sole responsibility for administering and ensuring licensees meet the conditions of their authorisations.

7.2. *Serious Incidents*

Following the occurrence of a serious incident as defined in the SEO that relates to EPA issues of concern, DMITRE and the EPA will consult and agree on:

- Whether a DMITRE and/or an EPA or independent investigation, in addition to that undertaken by the licensee, is required;
- The level of any enforcement action required to be taken;
- In the case where prosecution action is agreed to by DMITRE and the EPA, agree under which Act the prosecution should proceed.

This consultation will occur at the earliest practical time following an incident.

7.3. *Reportable Incidents*

Following the occurrence of a reportable incident as defined in the SEO that relates to EPA issues of concern, DMITRE and the EPA will meet as required to review the trends and discuss any possible follow-up action, including enforcement action.

DMITRE will make available to the EPA relevant incident reports submitted by PGE Act licensees.

7.4. *PSL Act Incidents*

In the case of any environmental incidents resulting from PSL Act activities, at the earliest

practical time DMITRE and the EPA will consult and agree on:

- The level of any enforcement action required; and
- In the case where prosecution action is agreed to by DMITRE and the EPA, under which Act the prosecution should proceed.

ENDORSED and AGREED:



Barry Goldstein

Executive Director, Energy Resources Division, DMITRE

DATE: 25th May 2012



Keith Baldry

Director, Regulation and Compliance, SA EPA

DATE: 25/6/12.