

OFFSHORE GREENHOUSE GAS GUIDELINE WORK-BID ASSESSMENT PERMITS

CONDITIONS AND ADMINISTRATION

A guideline in relation to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Prepared by the Commonwealth Department of Industry, Innovation and Science

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This document has been developed as a general guide only. It does not replace or amend the requirements of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and associated Regulations, which should be read in conjunction with the guide.

It is made available on the understanding that the Commonwealth is not giving legal or other professional advice. Before relying on this material in any important matter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purposes, and obtain appropriate legal or other professional advice relevant to their particular circumstances.

It is anticipated the guideline will be amended from time to time. This guideline is available online at: www.nopta.gov.au.

1. PURPOSE

- 1.1. The objective of this guideline is to set out the responsible Commonwealth Minister's expectations in relation to the conditions and administration of work-bid greenhouse gas assessment permits (**permits**) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGSA).
- 1.2. The guideline refers to the expectations and policies of the responsible Commonwealth Minister in respect of compliance with permit conditions, and the following applications under the OPGGSA:
 - 1.2.1. suspension of permit conditions: s 436
 - 1.2.2. extension to the permit term: s 437
 - 1.2.3. variation of permit conditions: s 436
 - 1.2.4. exemption from compliance with permit conditions: s 436
 - 1.2.5. surrender of permits: s 441.

2. GENERAL

- 2.1. A permittee should commence planning for work program commitments prior to entering into a permit year, in order to prevent avoidable delays to the work program.
- 2.2. Under s 291 of the OPGGSA, the responsible Commonwealth Minister may grant a permit subject to whatever conditions the responsible Commonwealth Minister thinks appropriate. Work bid assessment permits will typically contain standard conditions in relation to minimum work requirements.
- 2.3. Permittees must comply with all permit conditions, including the work program conditions specified on the permit. Failure to comply with the conditions of the permit may result in the refusal of an application to renew the permit (s 310) or surrender the permit (s 442), or in cancellation of the permit (s 446).

¹ **Responsible Commonwealth Minister** means the relevant Commonwealth Minister with responsibility for the administration of the OPGGSA: s 7.

- 2.4. The first three years of a permit term is referred to as the **primary term** work program. As provided in the standard condition 4 of the title instrument the work in this term is guaranteed and cannot be reduced with respect to the quantum of work or objective of the exploration.
- 2.5. Years 4, 5 and 6 are referred to as the **secondary term** work program. As provided in the standard condition 5 of the title instrument the secondary term work program becomes **guaranteed** once a permit year has commenced and may be varied subject to meeting the requirements outlined in this Guideline (see section 6).
- 2.6. The responsible Commonwealth Minister acknowledges that elements of an assessment work program or its timing may need to change as geological knowledge is gained, or if the timing of an operation is impacted by force majeure circumstance (see paragraph 5.2).

3. APPLICATIONS

- 3.1. The responsible Commonwealth Minister is the decision maker for applications described in paragraph 1.2 above. The applications must be made in writing and lodged with NOPTA.²
- 3.2. The responsible Commonwealth Minister considers all applications on a case-by-case basis, with reference to the expectations set out in these Guidelines.
- 3.3. Separate applications must be lodged for each permit.
- 3.4. For applications described in paragraph 1.2, if there is more than one registered holder of the title, and a current *Eligible Voluntary Action form* (EVA) has not previously been submitted, the application must also be accompanied by a duly executed EVA (Form 6).
- 3.5. Application forms and EVA forms are available at: www.nopta.gov.au.

4. WORK PROGRAM CONDITIONS

- 4.1. Standard Condition 1 of a permit require that permittees must carry out the minimum work requirements stated in each permit year, within the specified permit year. Failure to do so is a ground on which the responsible Commonwealth Minister may cancel the permit: s 446(a). Undertaking assessment activities in excess of the specified minimum work requirements is allowed.
- 4.2. Standard Condition 2 of a permit requires that a permittee shall not commence any key greenhouse gas operations in the permit area except with and in accordance with the written approval of the responsible Commonwealth Minister: s 291(3) and 292.
- 4.3. Standard Condition 3 allows NOPTA, at its discretion, to credit activities undertaken in an earlier permit year towards meeting a future minimum work requirement.
- 4.4. If a permittee wishes to have a completed activity credited to meet a minimum work requirement due in a later permit year, the permittee should apply to NOPTA seeking consent for the credit at least four weeks **prior to** the commencement of the activity. There is an application form on NOPTA's website.
- 4.5. Compliance with the permit conditions will be taken into account by the responsible Commonwealth Minister in considering any application by a permittee to vary the work program conditions of the permit under s 436, or for consent to surrender the permit, under s 441.

² All communications to or by a responsible Commonwealth Minister are to be made through NOPTA: s 695R

5. SUSPENSION OF A PERMIT CONDITION AND EXTENSION OF THE PERMIT TERM

- 5.1. Permittees may apply to the responsible Commonwealth Minister to either suspend a permit condition, or suspend a permit condition and, in connection with the suspension, receive an extension of the permit term. The responsible Commonwealth Minister will decide on these applications on a case-by-case basis, taking into account circumstances including:
 - 5.1.1. the existence of *force majeure* circumstances (see paragraph 5.7)
 - 5.1.2. if the permittee is seeking to undertake above commitment work that has critical implications for the assessment of the permit area, and requires additional time to complete that work (see paragraph 6.6)
 - 5.1.3. where a titleholder has a declaration of identified greenhouse gas storage formation, and is in the final year of the permit, the titleholder may apply for up to a six month suspension of the relevant work program condition(s) and extension to the term of the title to allow sufficient time to lodge a greenhouse gas holding lease or greenhouse gas injection licence application. These applications must be supported by evidence of the titleholder's intentions and timeframe for the additional six month period.
- 5.2. For the purposes of the work program conditions of a permit, a **suspension** will defer the end date of a current permit year for the purposes of meeting work program commitment(s) but will not alter the end dates of subsequent permit years. By comparison, a **suspension, together with an extension of the permit term**, will extend the end date of the current permit year and all subsequent permit years.
- 5.3. In the case of a suspension and extension application being lodged, the period of extension applied for **cannot exceed** the period of suspension, but may be less than the period of suspension: s 437.
- 5.4. A suspension of conditions of the permit under s 436 does not suspend the rights conferred on the permittee by s 290 to undertake work activities, subject to the conditions of the permit, OPGGSA and regulations.
- 5.5. Applications for suspension of the permit conditions, or suspension with an extension of the permit term, should be submitted during the following timeframes:
 - 5.5.1. before the permit expires
 - 5.5.2. no later than two months before the conclusion of the permit year to which the application relates.
- 5.6. If an application for suspension of permit conditions, or suspension and extension of the permit term, is lodged in conjunction with an application to vary-in substantial above-commitment work to the work program, the timeframes applicable to a variation application apply (see section **Error! Reference source not found.**).

***Force majeure* circumstances**

- 5.7. In making a decision to either suspend a permit condition, or suspend a condition with an extension of the permit term, the responsible Commonwealth Minister may consider whether the ability of the permittee to meet a work program commitment has been adversely impacted by an event that cannot reasonably be anticipated or controlled (*force majeure* circumstances).

- 5.8. Commercial circumstances and common risks in the industry are **not considered** to constitute *force majeure* for suspension and extension of the permit conditions. Such circumstances and risks may include, but are not limited to:
 - 5.8.1. changes in carbon prices
 - 5.8.2. difficulty attracting a farm-in partner
 - 5.8.3. difficulty in raising capital
 - 5.8.4. avoidable delays in contracting a drilling rig/seismic vessel
 - 5.8.5. disappointing greenhouse gas storage potential assessment results
 - 5.8.6. the need to wait for the results of work activities undertaken outside the permit area
 - 5.8.7. poor quality seismic data.
- 5.9. Applications for suspension of permit conditions, or suspension and extension of the permit term, on *force majeure* grounds must include substantial and compelling documentary evidence that demonstrates the *force majeure* circumstances that have adversely impacted the permittee's ability to complete the work program.

6. VARIATION OF WORK PROGRAM CONDITIONS

- 6.1. The responsible Commonwealth Minister may decide to vary the permit conditions, upon application by the permittee: s 436. Applications for variation of the work program conditions may be made where the permittee seeks to:
 - 6.1.1. replace a guaranteed work activity in any permit year with an alternative equivalent or superior work activity
 - 6.1.2. undertake above-commitment work in any permit year which has critical implications for the assessment of the greenhouse gas storage potential of the permit area
 - 6.1.3. vary the work program conditions in Permit Years 4, 5 and 6 subject to the provision of substantial and compelling technical evidence.
- 6.2. A more detailed outline of the responsible Commonwealth Minister's expectations on these matters is provided below.

Work equivalent variations of the Primary and Secondary Work Program conditions

- 6.3. Permittees may apply, at any time, to replace a guaranteed work requirement with an alternative equivalent or superior work activity.
- 6.4. In deciding whether to vary the work program the responsible Commonwealth Minister is likely to consider if the alternative work activity proposed is similar or superior to the original work program commitment, and meets or exceeds the objective of the original work commitment, amongst other things.
- 6.5. It is the responsibility of the permittee to ensure that the responsible Commonwealth Minister has agreed to the work equivalent variation prior to the permittee undertaking the alternative work activity.

Above-commitment work variations of the conditions

- 6.6. The permittee may, at any time within a permit year, apply to include significant above-commitment seismic surveying or drilling work into the guaranteed work program with a view to identifying a potential greenhouse gas storage formation or greenhouse gas injection site.

- 6.7. In deciding whether to vary the guaranteed work program the responsible Commonwealth Minister is likely to consider whether the permittee has demonstrated a significant effort to identify a potential greenhouse gas storage formation or greenhouse gas injection site prospect.
- 6.8. In such circumstances, the responsible Commonwealth Minister may also agree to grant a period of **up to twelve months** suspension with a corresponding extension of the permit term to provide sufficient time for the permittee to undertake the above-commitment surveying or drilling work. An application for a suspension, or suspension with an extension of the permit term, must be submitted with the variation application.
- 6.9. The permittee may also, at any time within the current permit year, apply for a variation of the specified work requirements to include other significant above-commitment work into the work program for that year, where that work is assessed to have critical implications for the permittee's forward assessment strategy for the permit area.
- 6.10. In such circumstances, the responsible Commonwealth Minister may also agree, upon application, to grant **up to six months** suspension with a corresponding extension of the permit term to allow sufficient time to complete that above-commitment work. An application for a suspension, or suspension with an extension of the permit term, must be made with the variation application.

Variation to the Primary Term Work Program

- 6.11. The minimum work requirements specified for each of Permit Years 1, 2 and 3 are also referred to as the primary work program. Primary work program requirements are guaranteed by the provisions of Standard Permit Condition 4 and, therefore, applications under s 436 to vary the work requirements in Years 1, 2 or 3 of the permit are unlikely to be viewed favourably by the responsible Commonwealth Minister.

Variation to Secondary Term Work Program

- 6.12. The minimum work requirements specified for Years 4 onwards are referred to as the secondary work program. Applications under s 436 to vary the minimum work requirement commitments for Years 4 onwards should be supported by a revised work program and assessment strategy that covers any or all of the remaining years of the permit term.
- 6.13. The s 436 application to vary minimum work requirements for the secondary term work program should be made no later than three months before commencement of the permit year for which the variation is sought.
- 6.14. The responsible Commonwealth Minister is unlikely to agree to vary the minimum work requirements in respect of the secondary term work program unless substantial and compelling documentary evidence is provided to support that the work program should be varied on technical grounds.
- 6.15. If agreement cannot be reached on a mutually acceptable work program, the permittee may decide to either request the responsible Commonwealth Minister to consent to a surrender of the permit, under s 441, or continue to hold the permit subject to the original minimum work requirements.
- 6.16. Where a substantial operational activity is sought to be varied out of the secondary term of an assessment permit, resulting in no substantial activity in the initial permit term, the responsible Commonwealth Minister may agree to the variation on the basis that the permittee proposes guaranteed operational activities during the three year term of any renewal application for that title.

7. EXEMPTIONS

- 7.1. The permittee may apply to NOPTA for the responsible Commonwealth Minister to exempt compliance with any condition to which the permit is subject: s 436.
- 7.2. With respect to minimum work program requirements, it is the responsible Commonwealth Minister's policy to only approve an exemption in exceptional circumstances.
- 7.3. Substantial and compelling documentary evidence, demonstrating the circumstances and that the objective of the assessment work program has been met, should be provided with the application.

8. ADDITIONAL POLICY RELATING TO MINIMUM WORK PROGRAM REQUIREMENTS

Non-exclusive (multi-client or proprietary) seismic data and reprocessing

- 8.1. A permittee may meet a proposed seismic surveying commitment by licensing an equivalent amount of non-exclusive seismic data that has been acquired within the permit area, after the date that the area was gazetted for acreage release or after submission of a renewal application, as the case may be.
- 8.2. A reprocessing commitment may be met in full or in part by the purchase or licensing of data that was reprocessed after the date that the permit was granted or renewed.
- 8.3. If reprocessed seismic data is purchased or licensed to meet a seismic reprocessing commitment, the data is expected to have been reprocessed from field tapes.

9. PERMIT SURRENDER

- 9.1. Permittees may apply in writing (via NOPTA) for the responsible Commonwealth Minister's consent to surrender a permit: s 441.
- 9.2. In deciding whether or not to consent to the surrender of the permit, the responsible Commonwealth Minister must consider whether the permittee has:
 - 9.2.1. paid any fees and amounts payable, or has made arrangements that are satisfactory to the responsible Commonwealth Minister for the payment of those fees and amounts: s 442(3)(a)
 - 9.2.2. complied with all conditions to which the permit was subject: s 442(3)(b), including if:
 - work program commitments have been met
 - all reports (including reports required by any directions given to the permittee) have been submitted (for example, reports on specified activities, quarterly reports, annual reports)
 - all required data has been submitted.
 - 9.2.3. Complied with the relevant provisions of the OPGGSA and regulations: s 442(3)(b) and satisfied the responsible Commonwealth Minister or made arrangements that are satisfactory for the protection and preservation of the marine environment: s 442(3) (c) - (f).
- 9.3. The responsible Commonwealth Minister may give consent to surrender, notwithstanding that the requirements in s 442(3)(b) have not been met, if satisfied there are sufficient grounds to warrant the giving of consent to the surrender: s 442(7).
- 9.4. Substantial and compelling documentary evidence that demonstrates that the objective(s) of the assessment permit work program has been met should be provided as part of establishing the sufficient grounds.

- 9.5. The responsible Commonwealth Minister may not consent to surrender a permit if not satisfied as to the matters specified in s 442(3)(c) - (f).
- 9.6. Following the responsible Commonwealth Minister's consent to surrender, the permittee may surrender the permit by written notice to NOPTA: s 443(2).
- 9.7. The surrender takes effect on the day on which notice of such is published in the Commonwealth Gazette: s 443(3).

10. PERMIT CANCELLATION

- 10.1. Permittees are expected to ensure that all obligations under the OPGGSA and the associated regulations, including any directions and permit conditions, are complied with.
- 10.2. Failure to comply with any such obligations, directions or permit conditions is a ground for the responsible Commonwealth Minister to cancel the permit: s 446.
- 10.3. Where the responsible Commonwealth Minister determines that cancellation of the permit is appropriate, the permittee will be served a Notice of Intention to cancel the permit: s 448.
- 10.4. Permittees will be given at least 30 days to make a submission regarding the proposed cancellation, and to provide any information or raise any issues that the permittee wishes the responsible Commonwealth Minister to consider in reaching a decision in respect of the cancellation: s 448(1) and (2).
- 10.5. The permittee will be advised in writing regarding the responsible Commonwealth Minister's decision in respect of the cancellation.
- 10.6. The cancellation takes effect on the day on which notice of such is published in the Commonwealth Gazette: s 447(3)
- 10.7. NOPTA will publish the cancellation of the permit in the Commonwealth Gazette: s 734 Item 7.

11. PERMIT EXPIRY

- 11.1. Permits expire on the day on which the permit ceases to be in force: s 10(2) Item 3. This will usually be the day following the last day of the end of Year 6 for initial permit terms, or Permit Year 3 for renewed permit terms, noting that the expiry date may be extended from time to time by the grant of an extension of the permit term by the responsible Commonwealth Minister (see section **Error! Reference source not found.**) or where an application has been lodged for renewal of the permit, for an identified greenhouse gas storage formation, or for a greenhouse gas holding lease or greenhouse gas injection licence.
- 11.2. Permittees may apply to renew the permit under s 308, prior to the expiry date, and within the prescribed timeframe (refer Requirements of Bid and Renewal Applications Guideline).
- 11.3. If the permittee intends to allow the permit to expire, the permittee should:
 - 11.3.1. ensure that they are compliant and that all guaranteed work commitments have been met
 - 11.3.2. submit any outstanding reports and data to NOPTA
 - 11.3.3. pay all outstanding fees and amounts, or make arrangements that are satisfactory to NOPTA for the payment of those fees and amounts

- 11.4. When a permit has expired or has been cancelled, the responsible Commonwealth Minister may give remedial directions to former permittees for the protection and preservation of the marine environment: s 595.
- 11.5. When a permit expires, NOPTA will write to the permittee informing it that the title has expired and notifying of any potential compliance issues (for example, outstanding work commitments, reports or fees).
- 11.6. NOPTA must notify the permit expiry in the Commonwealth Gazette: s 734, Item 8.