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Attention Glenn Wigley, Director – Marine, Environmental Risk and Science
Ministry for the Environment
Wellington

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PEPANZ Submission: Proposed amendments to the EEZ Act for Board of Inquiry cost recovery

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of the proposed amendments to the EEZ Act for Board of Inquiry cost recovery, which was circulated by the Ministry for the Environment for comment on 8 February 2018. PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

Summary

- PEPANZ accepts the Ministry's proposal to enable cost recovery for Board of Inquiry processes, given the original policy intent appears to have been for such cost recovery.
- PEPANZ recommends that the equivalent RMA provisions to object to costs should also be included.
- PEPANZ submits that it is efficient to use this Cabinet process to amend Regulation 16 of the *Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015* to reclassify offshore processing drainage as a non-notified discretionary activity. The current discretionary classification appears not to have been the original policy intent and its continuation imposes significant and unwarranted costs on operators and the regulator.

Comments

Introduction

PEPANZ welcomes the opportunity to provide feedback but expresses concern at the timeframe of three business days.

The proposals in the consultation document

PEPANZ accepts the proposal from the Ministry for the Environment, which is to provide cost-recovery powers to the Minister in relation to Boards of Inquiry processes under the EEZ Act. We support this because cost-recovery was anticipated when the Amendment Act was brought into force in April 2017, and the inability to charge and recover costs does not appear to align with the Government's policy intent.

This issue is important to the Crown because of the high cost of consent applications, and the implications for Crown finances. As an industry, we too are acutely aware of the high cost of consent applications. and share your desire to quickly resolve issues which may add unintended costs. We therefore understand the urgency with which this proposal is being progressed.

The Ministry's letter did not specify the comparable section of the Resource Management Act 1991 that the cost-recovery provision would be based on, but we assume it is Section 149ZD "Costs of processes under this Part recoverable from applicant". To provide a fair process, we submit that a section comparable to s357B of the RMA be considered for inclusion, to provide a "Right of objection in relation to imposition of additional charges or recovery of costs."

Given the very short timeframe for providing feedback on this proposal, we have not had the opportunity to assess whether the existing cost recovery regime in ss143-147 of the EEZ Act could more easily and appropriately be adapted to Board of Inquiry cost recovery than introducing the RMA's Board of Inquiry cost recovery regime.

An analogous issue for the offshore oil and gas sector

If this issue is of financial concern to the Crown, a current analogous issue for the offshore oil and gas sector is one caused by a specific regulation. In terms of significant and unwarranted costs being imposed on parties (including the regulator), we take this opportunity to again draw attention to the issue with Regulation 16 of the *Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015*.

We seek, as a matter of urgency, an amendment to Regulation 16, to reclassify the discharge of offshore processing drainage from *discretionary* to *non-notified discretionary* to restore what we understand to be the original policy intent. The tests set out in Section 29D of the EEZ Act can be demonstrated – the discharge "has a low probability of significant adverse effects on the environment or existing interests," and is "routine or exploratory in nature".

Issues with Regulation 16 being applied to exploration activities

It is clear from the consultation in 2014 on the Discharge and Dumping regulations that the offshore processing drainage regulation was only meant to relate to production activities[1]. In addition, the supporting information that accompanied the relevant exposure draft[2] covers offshore processing drainage under the subject of "Discharges from petroleum extraction" and states "*Ministry for the Environment officials received advice that these discharges do not occur during the exploration phase of operations*."

[1] "*Offshore processing drainage: water from hazardous or non-hazardous deck drains but does not include the oily waste from machinery spaces. Offshore processing drainage is oil that seeps or leaks from pipe work and machinery used to* ***process the oil from the reservoir***" (emphasis added, noting that oil is not processed during exploration), which can be found on page 17 of the initial discussion document at: http://www.mfe.govt.nz/sites/default/files/activity-classification-under-the-eez-act.pdf

[2] See page 22, https://www.mfe.govt.nz/sites/default/files/supporting-information-exposure-draft-discharge-dumping-eez-feb14.pdf

However, the Environmental Protection Authority, in relation to Shell Taranaki Limited's marine consent application of 2017, determined that exploration activities do involve the discharge of offshore processing drainage. We understand the EPA has confirmed it takes this view of "offshore processing drainage" and will apply this in future. We accept the discretion of the EPA to interpret the law as it currently stands, but the current law does not give effect to what we understand to be the original policy intent.

As a *discretionary* discharge, this means full public notification is required for this one aspect of exploration activity that has otherwise been carefully classified as non-notified discretionary. The discretionary classification effectively overrides the general non-notified approach for this activity and will likely cause difficulties for the EPA when administering applications for exploration in the future in terms of potentially multiple consent processes for the same exploration activity.

Process going forward

PEPANZ asks that the Ministry proceed to resolve this issue as soon as possible. Given the Minister intends to take a policy paper to Cabinet to amend the EEZ Act to enable cost recovery for Board of Inquiry processes, we consider it to be efficient at the same time to also seek Cabinet approval to resolve this issue.

We note the likely obligation on the Minister to consult with the public under s32 of the EEZ Act when changing an activity status. We further ask that this consultation be conducted with some urgency given the imminent lodging of exploration consent applications that will be affected by this issue with Regulation 16.