Protection of the Environment Operations Amendment (Scheduled Activities) Regulation 2013

Coal Seam Gas Amendments

Statement of Compliance with the Better Regulation Principles

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1 Executive summary

This is a statement of compliance with the better regulation principles for the *Protection of the Environment Operations Amendment (Scheduled Activities) Regulation 2013* (the Amendment Regulation). It relates only to those aspects of the regulation which relate to coal seam gas activities (CSG).

1.1 Purpose of Amendment Regulation

The purpose of the Amendment Regulation is to:

- implement the NSW Government's decision that the Environment Protection Authority (EPA) will be the lead regulator of environmental and associated health impacts of CSG activities with responsibility for compliance and enforcement
- require anyone conducting CSG exploration, assessment and production activities to hold an Environment Protection Licence (EPL)
- prescribe a licence administrative fee for CSG exploration

  and
- prescribe licence administrative fees and assessable pollutants (where relevant) for CSG assessment and production activities.

1.2 Recommendation

The EPA recommends proceeding with the Amendment Regulation. It achieves the Government's objectives for the EPA to lead regulation of the environmental and health impacts of CSG in NSW at least cost to the community and is consistent with the operation of the *Protection of the Environment Operations Act 1997* (POEO Act). The Amendment Regulation is in line with Government policies and will:

- promote community confidence that the impacts (e.g. noise emissions and water pollution) associated with CSG exploration, assessment and production are appropriately regulated
- simplify the regulatory framework and remove the current potential for uncertainty regarding which authority is responsible for regulating environmental impacts associated with the different activities relating to CSG

  and
- provide greater consistency and regulatory certainty for the CSG industry.

2 Need for Government action

There is significant community concern regarding the potential impacts of CSG activities on human health and the environment as well as the adequacy of current compliance and enforcement. A new approach is needed to rebuild trust and confirm the Government's ability to protect the community from potential impacts while enabling the industry to develop in NSW.

In response to the community's concern, on 19 February 2013 the Premier announced new measures to further strengthen regulation of the CSG industry in NSW. Under this proposal the EPA will become the lead regulator of the environmental and associated health impacts of **all new and existing** CSG activities in NSW. This includes issuing EPLs for all sites and for compliance and enforcement.

This proposal is designed to allow the EPA to meet the community's expectations for a strong regulator that protects their health and the environment. If supported this proposal will mean the people of NSW can be confident that CSG activities are regulated in a credible and transparent manner and that industry is held accountable for its environmental performance.

These proposed POEO Act amendments complement the proposed amendments to SEPP (Mining, Petroleum Production and Extractive Industries) 2007, which provide for a 2-km CSG exclusion zone around certain residential zonings.

2.1 The policy problem

Currently, Schedule 1 of the POEO Act only requires a premises to hold an EPL if it has the **capacity to produce more than 5 petajoules of natural gas and/or methane per year**.

Schedule 1 was devised prior to the CSG industry emerging. It is now a rapidly evolving industry with substantial exploration occurring within NSW. Expansion of the CSG industry is taking place in the north and north-west of the State. Key areas are around Narrabri, Casino, Clarence Valley, Gloucester and Broke. Based on available data, the CSG industry will continue to develop and expand fastest in the north-west due to the better accessibility of CSG reserves. Large-scale expansion of CSG activity is also planned for the Upper Hunter area.

The potential environmental issues associated with CSG operations are complex (e.g. interactions between surface and groundwater systems) and will require specialised expertise.

The EPA is proposing to enhance its specialist resources around CSG assessment and licensing and will be best placed to provide the appropriate level of regulation.

The current regulatory framework is also complex and can be confusing to both industry and the community. For example, it can be difficult to determine which agency is the appropriate regulatory authority (ARA) for each of the potential environmental impacts of CSG activities. It is necessary to change the regulatory framework to create a coordinated approach between the EPA, the Office of Environment and Heritage (OEH), the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS), the Department and Planning and Infrastructure (DP&I) and the NSW Office of Water (NOW). Changes are needed to ensure that the industry is regulated efficiently and consistently, and that the roles and responsibilities of each regulatory jurisdiction are clearly defined.

The POEO Act is the principal legislation in NSW dealing with environmental issues, including noise. Currently under the POEO Act, local councils are the ARAs for CSG activities that fall under 5 petajoules and the EPA is the ARA for those activities that produce over 5 petajoules. Not all councils in areas where the CSG industry is predicted to expand

significantly will have the resources or technical expertise to appropriately regulate the complex issues associated with this industry.

2.2 Legislative amendments

Legislative amendments are required for all CSG exploration, assessment and production to be regulated and licensed by the EPA. The Amendment Regulation will amend Schedule 1 of the POEO Act to:

- define CSG
- create a new activity for 'CSG exploration', set the licensing threshold for that activity to 'any' and define 'CSG exploration activities'
- create a new activity for 'CSG assessment and production'
- set the licensing threshold for that activity to 'any'
- define CSG 'assessment and production'
- specifically exclude activities relating to CSG and methane extracted at, or from, a coalmining facility
- include a list of low-impact exploration activities which will not require an exploration licence

  and
- include a provision that shortens the existing nine-month grace period for holding a licence for both of the new activities to three months by replacing the general transition provision under section 52 of the POEO Act and clause 47 of the POEO General Regulation for the new activities.

The Amendment Regulation will amend Schedule 1 of the POEO (General) Regulation 2009 to:

- set a flat administrative fee for the new activity 'CSG exploration' that is consistent with other similar activities and related to the expected regulatory effort that is likely to be required for this activity
- include administrative fees and assessable pollutants under the load-based licensing scheme for the new activity 'coal seam gas assessment and production' that are consistent with those for 'natural gas/methane production'
- add salt as an assessable pollutant to the new activity 'coal seam gas assessment and production' and to the existing activity 'natural gas/methane production'.

  and
- amend the units of production to petajoules (PJ) rather than tonnes, for the purpose of administration fees for 'natural gas/methane production', to be consistent with:
  - the proposed administration fees for 'coal-seam gas assessment and production'

    and
  - standard industry approaches when describing production rates.

2.3 The risk of taking no action

If no regulatory action were undertaken, there is a risk that the future expansion of the CSG industry in NSW will continue to be a major cause of concern to the NSW community. The industry would have to continue under the presently complex, confusing and possibly uncertain regulatory regime which may have the potential for significant impacts to the environment and human health.

3 Objective of Government action

The NSW Government seeks to implement effective and consistent regulation of all CSG activities. Given that a large increase in CSG exploration, assessment and production is expected over the coming decades, the overall objective of the licensing approach is to increase industry and community confidence that all CSG activities will be appropriately regulated.

It is important that this is achieved at least cost to the community and in a way that supports the Government's policy and objectives.

As the regulator, the EPA's objectives are to:

- improve the transparency and accessibility of information to the community
- provide up-front information and certainty to the industry about the level of environmental performance it needs to achieve
- avoid duplicating regulatory requirements
- ensure the EPA's powers are effective for regulating the CSG industry, that tools are strong, flexible, proportional and fit-for-purpose
- minimise costs and red-tape for CSG operators

  and
- minimise the costs and administrative burden to the EPA.

Transparency and accountability will increase under the proposed approach as EPLs and other regulatory actions taken by the EPA will be publicly reported through the EPA's Public Register, which includes annual compliance reports by licence holders. Additionally, all licence holders must make their monitoring data (that is required to be collected under a condition of their EPL) available to the public through their company's website or otherwise on request.

4 Options considered

The EPA considered the costs and benefits of three options for implementing the Government's decision for the EPA to become the lead regulator of the environmental impacts of CSG under the POEO Act.

1. Maintain the status quo.
2. Make the EPA the ARA for all activities without licensing.
3. Make the EPA the ARA and requiring licensing for all CSG activities (the recommended option).

4.1 Option 1: Maintain status quo (not viable)

Maintaining the status quo means the EPA would continue to regulate only those CSG production operations with the annual capacity to produce more than 5 PJ of gas. Local government would continue to be the ARA dealing with environmental issues pertaining to CSG production below this threshold. No legislative amendments would be required.

Further, DTIRIS and DP&I would continue to have a regulatory role, including regulations relating to activities with a potential environmental impact.

This option is not viable because the Government has committed to the EPA becoming the lead regulator of all CSG activities. This is not possible without the proposed legislative change.

This option also does not address the risks of taking no action, as identified under section 2.3.

4.2 Option 2: EPA as regulator without licensing (not recommended)

Under this approach, the POEO General Regulation would be amended to simply establish the EPA as the ARA for CSG exploration, assessment and production activities. However, these operations would not be required to hold EPLs. The EPA would regulate the sector on an as-needs basis through its existing notice powers under the POEO Act. Notice powers are commonly used by local councils to carry out their ARA functions under the POEO Act.

Benefit

The main benefit of this approach is that, while the EPA would be the ARA under the POEO Act for all CSG activities, there would be no licensing requirement. Consequently there would be no up-front or ongoing administrative costs for the industry. As is currently the case for local government, the EPA would intervene only when relevant environmental issues arise, using regulatory discretion as per the EPA's standard practice. In some cases, the ARA's costs of issuing POEO notices can be recovered.

Costs

POEO notices are limited in their scope and application. They have been designed to deal with relatively minor or straightforward environmental issues at non-scheduled premises.

While the ARA's costs can be recovered for some notices, overall this option provides limited opportunity for the EPA to recover costs associated with exercising regulatory functions.

Conclusion

While this approach does not increase or change the regulatory burden for the CSG industry (as there is no requirement for an EPL) it does change the existing regulatory regime by shifting the responsibility for regulatory intervention from local government to the EPA. However, it may not effectively achieve the Government's objective of increasing community confidence that the environmental impacts of all CSG activities are appropriately regulated. There are limited opportunities for the EPA to recover the costs associated with regulatory effort.

4.3 Option 3: EPA as regulator with licensing (recommended)

The licensing approach would amend Schedule 1 of the POEO Act to include 'CSG exploration' and 'CSG assessment and production' as scheduled activities. This would also effectively make the EPA the ARA for all CSG exploration, assessment and production activities.

Benefits

Environment protection licensing is an established regime which is familiar to the community, industry and EPA officers. The available regulatory tools are strong, flexible and fit-for-purpose and the administrative systems are in place and operate effectively. Transparency and accountability will increase under this option as EPLs and other regulatory actions taken by the EPA will be publicly reported through the EPA's Public Register.

By using a licensing approach, the EPA can tailor a range of site-specific licence conditions for individual CSG premises including noise limits, monitoring and reporting requirements. This approach clearly identifies the EPA as the regulator of these issues. Note that the EPL must be substantially consistent with the planning consent when issuing the licence for state significant developments (SSD).

Under the existing provisions of the EP&A Act, where an EPL will be required for a SSD proposal, the EPA is required to provide expert advice to the consent authority. This includes providing recommended environmental performance requirements, as well as recommended limits for noise and discharges to water. This allows the EPA to inform the development of conditions of consent. The EPL is required to be substantially consistent with the planning consent for SSD-approved projects when developing the licence. This ensures the limits in the initial licence are consistent with the planning consent, giving CSG operators regulatory certainty.

Moving all CSG activities to the environment protection licensing regime shifts the existing responsibility for taking action under the POEO Act for environmental matters such as noise, air and water from local government to the EPA. It provides additional clarity about who has responsibility to apply POEO Act powers without significantly changing the regulatory regime.

Costs

Annual licence administrative fees would be payable for licensed CSG activities; however, they are relatively small compared to the potential returns to CSG operators and are comparable to the fees payable by other similar industries.

Licensees will also be required to submit annual returns to the EPA, which increases regulatory burden. However, this is not an onerous requirement and it provides feedback to the community and the regulator. See section 5.1 for a more detailed analysis and discussion on compliance costs.

Conclusion

On balance, licensing of all CSG exploration, assessment and production (option 3) was the preferred option because it best meets the Government's objectives for the EPA to be the lead regulator of the environmental impacts of CSG activities in NSW. It is an established regime that is familiar to the community, industry and EPA officers. The available regulatory tools are strong, flexible and fit-for-purpose and it clarifies that the EPA will be responsible for taking regulatory action.

5 Considering the costs and benefits of licensing all CSG activities

5.1 Costs for licensees

There will be a small additional regulatory burden placed on CSG operators through implementing a licensing approach. All CSG exploration, assessment and production activities will be required to apply for a licence and pay the annual licence administrative fee to the EPA.

There are three primary costs:

- administrative fees for exploration licences
- administrative and load-based licensing (LBL) fees for assessment and production licences
- annual return compliance for all CSG licences.

5.1.1. Licence administrative fees for exploration

The Amendment Regulation prescribes annual licence administrative fees for CSG exploration which have been set based on internal economic analysis. The objectives for establishing the fee structure were:

- to set fees that reflect the degree of regulatory effort required relative to other similar activities

  and
- to ensure that the fee structure was simple for applicants to understand and the EPA to administer.

The fee prescribed for CSG exploration in the Amendment Regulation is a flat fee of 40 administrative fee units, approximately $4500. This reflects:

- administrative fees of other comparable activities in NSW and with the fees charged in Queensland (further detail on the Queensland fees is given below)
- the estimated average regulatory costs of the EPA for administering and enforcing CSG exploration EPLs

  and
- the impact of the activity given that, irrespective of the size of the company, there is likely to only ever be a single drilling unit operating at one time on a site for exploration, resulting in similar environmental risks and impacts for all exploration licences.

Equivalent Queensland fees for CSG exploration

In Queensland, a proponent must have been granted an Authority to Prospect (ATP) by the Minister for Natural Resources and Mines before they may legally explore for CSG. This is broadly comparable to a petroleum exploration licence (PEL) issued under the *Petroleum (Onshore) Act* 1991 (PO Act) in NSW. The ATP application must be accompanied by an environmental authority (EA). An EA is a tenure issued to an 'explorer' (an individual or a company) to allow activities necessary to explore for and determine and evaluate the presence of hydrocarbons underground.

Annual fees for relevant CSG exploration operations are related to the risk of environmental harm occurring as a result of the exploration activity (as identified in the relevant EA). Higher fees would be due where the following types of risks are identified: clearing endangered

vegetation, using regulated dams for produced water or undertaking an associated activity that would usually require an additional environmental authority (such as a sewage treatment plant). The application fees are $533 for exploration activities with low environmental-risk profiles. These proponents are also required to pay an annual fee of $533. Proponents who conduct activities with high-risk profiles are given an Aggregate Environmental Score (AES) based on the level of risk. This AES is then multiplied by a fee unit (currently $220) to determine the annual fee for the activity.

Annual fees for high-risk activities currently range from $26,900 to $35,200. There are currently about 70 applications for exploration activities each year, 10 per cent of these are for high-risk activities. An average annual CSG exploration fee in Queensland (estimated across low- and high-risk activities) is approximately $3000. The Queensland Government is currently considering a range of ways to move towards cost recovery for regulating high-risk exploration activities; this could result in a significant increase in these fees.

NSW exploration industry

The NSW CSG exploration industry is currently made up of 16 different exploration titles held by 14 separate operators. The operators range in size from very large corporate entities (which mostly undertake CSG production) to smaller operations (which mainly undertake exploration activities). Broadly there are six large operators (with more than 15,000 km^2 of exploration titles), three mid-sized operations (between 15,000 km^2 and 6,000 km^2 of exploration titles) and five smaller operators (less than 6000 km^2 of exploration titles).

All these operators can potentially make large financial returns (in the order of millions of dollars) from these exploration operations if viable CSG reserves are proven. This financial return can be either through moving to CSG production or selling the proven reserves to a CSG production operator. The proposed annual fee of 40 administrative units is small compared to the potential returns. Operators are expected to hold exploration licences for between one and ten years, as exploration progresses across the licensed area. While the financial cost will be relatively higher for the smaller operators, this would be somewhat offset by the fact that the larger operators are more likely to hold multiple exploration EPLs and so pay multiple annual fees, while the smaller operators generally would only hold one.

The total annual administrative licence fees payable for CSG exploration licences will range from $70,000 to $200,000. This variation is due to uncertainty in the number of EPLs that industry will apply for. This is primarily dependent on the number of PELs (issued by DTIRIS under the PO Act) held by an individual company that will translate to an individual EPL. The EPA is continuing to refine its policy position on how the licensed premises will be defined; this decision is in part dependent on determining the area of land that it is appropriate for a CSG exploration EPL to cover. For example, some PELs cover very large areas (in excess of 15,000 km^2) and it may not be appropriate to regulate this under a single EPL. At its lowest, this is likely to be only 1 EPL for each of the 14 exploration industry members; however, it may be as many as 1 EPL for each of the 45 PELs held (or more).

5.1.2. Licence administrative fees for assessment and production

Costs to licensees

The Amendment Regulation prescribes annual licence administrative fees for CSG assessment and production which are based on the existing fee scales for the activity ‘natural gas/methane production’. The fee units are based on the size of the CSG operation and the fee unit charged in the relevant financial year (see following table).

Coal seam gas assessment and production (see Schedule 1 to the Act)	
Units of measure: petajoules	
Administrative fee	
Annual production capacity	**Administrative fee units**
Not more than 6 PJ	65
More than 6 PJ but not more than 15 PJ	165
More than 15 PJ	660

Units of measure: *petajoules*	**Administrative fee units**	**No. of assessment and production licences (over a 5-year period)**	**Costs**
Administrative fee			
Annual production capacity			
Not more than 6 PJ	65	5	$36,725
More than 6 PJ but not more than 15 PJ	165	2	$37,300
More than 15 PJ	660	1	$74,500
			Total $148,525

The Amendment Regulation also prescribes load based fees and assessable pollutants for CSG assessment and production which are consistent with those of the existing activity 'natural gas/methane production' (see the following table). It is proposed to include 'salt' as an additional water pollutant for the purposes of LBL. Salt is a significant water pollutant and salt load in the water 'produced' during CSG assessment and production (when a coal seam is dewatered) is proposed to be subject to the LBL scheme. The current arrangement where salt is not included is inequitable. This change is consistent with many other comparable activities which have the potential to result in the release of 'salt'.

Load based fee	
Air pollutants	**Threshold factor**
Benzene	0.004
Benzo(a)pyrene (equivalent)	0.005
Fine particulates	0.2
Hydrogen sulfide	0.031
Nitrogen oxides and nitrogen oxides (summer)	0.5
Sulfur oxides	0.6
VOCs and VOCs (summer)	0.4
Water pollutants	**Threshold factor**
BOD	0.14
Oil and grease	0.12
Salt	3.6
Suspended solids	0.36
Total PAHs	0.07
Total phenolics	0.27

For consistency, the Amendment Regulation also changes the units of measure for production capacity for 'natural gas/methane production' from tonnes to the equivalent in petajoules and includes salt as an assessable water pollutant.

It is not possible to estimate with any accuracy the LBL fees that would be payable for assessment and production EPLs from 2013−2018. The LBL fees payable will be highly variable across individual licences and are totally dependent on the nature of any discharge to air or water from the CSG operation. There is a significant variation in the geological conditions from which coal seam gas is extracted − if a coal seam does not contain a large volume of water to be removed, or if that water does not have many assessable pollutants, then the fees will be low. The fees payable will also vary over time.

For example, for an established CSG assessment and production licence which triggers the 6-petajoule threshold (approximately 60 wells) and where there are assessable air pollutants only and no assessable water pollutants, the annual LBL fees that would be payable are likely to be in the order of $17,000.

The production of more than 5 petajoules of CSG in NSW is currently subject to the LBL Scheme under the existing scheduled activity, 'petroleum and fuel production'. This will be continued under the current proposal and expanded to include any assessment or production of CSG. This means the polluter-pays principle will continue to apply and its application will be expanded to ensure that CSG assessment and production licensees are accountable for their emissions and are provided with incentives for reducing these emissions beyond strict compliance with their licences.

The NSW and Commonwealth governments have implemented a number of other mandatory schemes that are designed to encourage pollution abatement by applying the polluter-pays principle. Another example in NSW is the Hunter River Salinity Trading Scheme which is administered by the EPA. More recently, the Commonwealth Government has introduced the carbon pricing mechanism, which is a greenhouse gas emissions trading scheme.

Polluter pays principle

'Those who generate pollution and waste should bear the cost of containment, avoidance or abatement' (section 6(2)(d)(i) *Protection of the Environment Administration Act 1991*).

5.1.3 Annual reporting

All licensees are required to submit to the EPA an annual return within 60 days of the end of their annual reporting period. This is a self-reporting system. The complexity of the annual return depends on the level of compliance with the licence, the number of complaints received during the reporting period and the nature of any monitoring conditions.

The form or content of a CSG annual return will not be different to that required of any other licensee. Before the licence anniversary date, the EPA sends the licensee a premises-specific, printed annual return form to complete. The annual return includes the relevant licence details, a statement of compliance with licence conditions, monitoring and complaints summary (details can be included as attachments), and a section for signature and certification.

5.1.4 Summary of licence and administrative fee costs

The total fee to licensees (including both administrative and LBL fees) across both exploration and assessment and production licences is estimated to range from $220,000 to $350,000 per annum. This is based on the likely fees that will be payable five years after the regulatory amendments have commenced and allows time for some exploration licences to transition to assessment and production.

There are benefits of the proposed approach of having prescribed licence administrative fees for CSG exploration and prescribed licence administrative fees *and* load based fees for CSG assessment and production. This approach:

- matches the EPA's risk-based approach to licensing
- allows the EPA to recover most of its expanded regulatory administration costs
- will impose a relatively small additional financial burden on the regulated community compared to the industry investment in infrastructure and the potential financial returns
- is consistent with comparable activities in Queensland and the approach used there and
- is simple to understand.

The licence administrative fees are not expected to have any significant impact on consumers, industry or investors.

5.2 Benefits to licence holders

The EPA becoming the lead regulator of CSG will provide the following key benefits to CSG licence holders:

- a simpler and more transparent regulatory framework − the current regulatory framework is overly complex and involves multiple agencies and authorities providing multiple approvals and therefore has a greater potential for duplicating responsibilities
- timely approvals of licences − as the State's dedicated environmental regulator, the EPA is best placed to meet this growing regulatory demand in a timely and efficient way

  and
- a consistent approach and decisions − the POEO Act licensing regime is well established with industry and is strong, flexible, proven and fit-for-purpose.

5.3 Costs and benefits for the EPA

The EPA estimates it will need additional staff to conduct regulatory work related to CSG. This includes regional operations staff, technical specialist staff, legal officers and policy officers. These resources are currently being established.

Regulatory work will include:

- reviewing environmental assessments for air, water, noise, waste and contamination for proposals and recommending appropriate consent conditions to consent authorities
- reviewing information received from licensees and applicants
- developing appropriate licence conditions
- responding to complaints relating to licensed premises
- conducting licence reviews

  and
- other ongoing regulatory works as required (e.g. education, inspections, developing pollution reduction programs, compliance audits, investigations).

The prescribed licence administrative fees for both CSG activities will generally recover these costs. Depending on the level of regulatory work required over and above these estimates, the EPA may need to fund these regulatory activities from existing resources.

5.4 Costs and benefits to other stakeholders

Benefits

Benefits for the community

The Amendment Regulation will support the Government's objective of restoring community confidence in regulating all CSG activities. Changes to make the EPA the lead regulator by licensing all CSG exploration, assessment and production will assist in allaying some community concerns regarding the impacts of the industry. Public reporting requirements under the POEO Act will provide the community with more information about the industry.

It will provide a clear avenue for complaints (through the EPA's Environment Line) and documentation that the EPA can use to assess compliance (through annual returns).

Cost to the community

There is no cost to the community.

Benefits for the environment

Exploration

The primary environmental impacts from CSG exploration which are regulated under an EPL are noise impacts arising from numerous activities. These include site set-up, drilling core holes and pilot wells, cementing wells, and machinery movements.

Assessment and production

In CSG assessment and production phases the primary environmental impacts are likely to result from well drilling and the hydraulic fracturing process. These impacts could include changes to water quality and potential changes to aquifer interconnectivity. There may also be additional noise impacts associated with field-gas compression facilities, constructing pipelines and gas-gathering lines and large-scale gas treatment facilities.

By using the established and familiar regime of environment protection licensing, the EPA can tailor a range of site-specific licence conditions for individual CSG premises including noise limits, pollution concentration limits for air and water and monitoring and reporting requirements to manage these impacts.

Costs for the environment

There is no cost to the environment.

6 Consultation

As approved by Better Regulation Office (BRO), focused stakeholder consultation was undertaken with relevant NSW agencies, key industry players, Local Government NSW and relevant environment and community groups on the draft Regulation. Letters were sent to 15 key stakeholders (enclosing a draft Regulation) on 17 April 2013. Consultation closed on 7 May 2013 and six submissions were received.

The key issues raised (along with the EPA's response to each) has been captured and these are provided in section 6.2.

6.1 Consultation on the draft Amendment Regulation

Consultation on the draft regulation was undertaken in two main ways through:

- a series of meetings held with key stakeholders
  and
- seeking comments on the draft regulation from key stakeholders.

The Better Regulation Office (BRO) confirmed this approach was appropriate.

The stakeholders listed below were provided with a copy of the draft Amendment Regulation and a set of explanatory questions and answers. They were given approximately three weeks to consider and provide comments.

Key industry stakeholders

- The Australian Petroleum Production and Exploration Association (APPEA)
- AGL Pty Ltd
- SANTOS Ltd
- DART Energy Ltd
- Arrow Energy Ltd and
- Metgasco Pty Ltd.

Community and environment groups

- NSW Farmers Association
- Scenic Hills Association
- Environmental Defenders Office
- Total Environment Centre
- Nature Conservation Council
- The Wilderness Society and
- The Northern Inland Council for the Environment.

Government

The Coal Seam Gas Whole of Government working group was briefed on the proposal in April 2012 and given the opportunity to comment on the draft regulation. The group includes representatives from:

- DTIRIS
- NSW Department of Premier and Cabinet (DPC)
- NSW Office of Water

- NSW Health

  and
- Department of Planning and Infrastructure.

Local Government NSW was also provided with a copy of the draft regulation for comment.

6.2 Results of consultation

There were six submissions on the draft regulation, from two State government agencies, one industry association, one environmental organisation and two from the CSG industry. All submissions were broadly supportive of the EPA becoming the lead regulator of CSG, primarily because this will provide greater certainty for the approvals process.

The submissions raised several key concerns including:

- the need to better align the definitions of the new CSG activities with the PO Act to reduce any potential for confusion
- questions regarding the list of low-impact exploration activities that do not require an EPL
- the need to seek a single regulatory regime that includes the requirements of both the PO Act (conditions and approvals related to petroleum exploration licences (PELs), petroleum assessment leases (PALs) and petroleum production leases (PPLs)) and the new POEO Act requirements
- concern that industry would be required to hold (and pay fees for) a large number of EPLs covering multiple exploration and production operations within the very large areas covered by some petroleum titles

  and
- opposition to CSG operations paying load based fees as this is inequitable, given it does not apply to other activities which discharge 'salt', such as coal mining operations.

Industry

Concerns were raised regarding the transitional arrangements for moving from the existing approvals regime for exploration (PELs under the PO Act) to EPLs under the POEO Act. Specifically, industry is concerned about whether the time required for the EPA to issue EPLs would cause additional delays to specific projects. Industry would like to see the list of low-impact activities expanded and to have greater alignment between the definitions used in the PO Act and the POEO Act to reduce any potential for confusion.

Government

Feedback from the CSG Interagency Working Group indicates broad support for amending the regulation. The specific issues raised by Government agencies related to clarifying the definition of one of the low-impact activity exemptions, the need for greater consistency between the terminology used in the PO Act and the POEO Act and ensuring the definition of CSG assessment and production is broad enough to capture all CSG assessment and production operations occurring under both PALs and PPLs.

Environmental organisations

The Environmental Defenders Office (EDO) was also broadly supportive of the amending regulation. Issues raised included the potential for the activity definitions to be ambiguous and that some of the low-impact activities were too broad and could result in the EPA not regulating all CSG activities with environmental impacts.

The EDO also provided numerous comments and recommendations relating to the type of issues that should be managed through specific conditions on future CSG EPLs.

The table below provides a summary of how the EPA has considered and acted on the key issues raised in the submissions.

Key issues raised	EPA response	Action
The new activity definitions should: • Be more consistent with the language used in the PO Act. • Ensure they accurately capture all the activities occurring.	Noted. The potential for confusion is recognised and, wherever reasonable, the language has been standardised.	Amendments made to regulation to increase consistency with the PO Act. 'Prospecting' is now used in the definition of 'CSG exploration'.
The list of low-impact activities should be refined: • Include more of the exemptions provided in the Mining SEPP. • Reduce the scope and type of some exemptions. • 'Down-hole logging' can impact aquifers where it passes through an aquifer. • The exemption for CSG recovered in coal mining is too broad, meaning fugitive methane emissions may not be covered by a coal mining EPL. • Exclude 'high pressure gas pipelines' approved and licensed under the *Pipelines Act 1967*.	The exemption for 'down-hole logging' applies to the use of various data-logging devices down an existing borehole, not creating the borehole itself. Potential impacts on aquifers are regulated by NOW under the Aquifer Interference Policy (AIP). The potential impact of degassing and air emissions at coal mines is already regulated under relevant coal-mining licences. Pipelines within the premises need to be regulated as part of the EPL.	Amendments made to the regulation to clarify and expand the list of low-impact activities to ensure it is consistent with the Mining SEPP and does not duplicate the regulatory responsibilities of other agencies such as NOW.
Clarity of Government roles: • Clarify the roles of EPA and DTIRIS under the proposed amendments • There should only be a single regulatory process. • Conditions on EPLs should be consistent with those on PO Act titles.	Concerns result from a misunderstanding of the operation of the PO Act and the POEO Act. Supporting information will increase awareness of how [these two agencies coordinate their regulatory effort to ensure there is no regulatory duplication or conflicting requirements.	No amendments required.
Transitional arrangements: • The new regulatory regime must be established fast. • There must be support to allow industry to continue operating while becoming familiar with the amendments.	The three-month (instead of nine) grace period for industry to apply for any required EPL is proposed to ensure that the EPA has the appropriate tools it needs to regulate the potential impacts of CSG as quickly as possible. EPA will develop policy and internal operational guidance to reduce the potential for delays in licence development.	No amendments required.

Key issues raised	EPA response	Action
Licence fees: • Charges should be reasonable and reflect the environmental risks of the exploration process. • The proposal is inequitable since LBL does not apply to all industries with similar impacts (i.e. irrigation and coal mining).	CSG activities that trigger the existing licensing threshold for 'natural gas/methane production' are already subject to the LBL scheme. The only change is including salt as an assessable water pollutant. This was an oversight when the scheme was initially established. While coal mining or irrigation activities are not subject to LBL, both are included in other schemes which regulate salt or saline discharges, such as the Hunter River Salinity Trading Scheme. This covers a large part of the coal-mining industry in an area at potentially high risk from saline discharges. There are specific provisions in the LBL load-calculation protocol to avoid duplicating these fees.	No amendments required.
Future review of the amendments: • The EPA should review the new CSG EPL requirements within two years, with the involvement of the CSG industry.	Noted. The EPA is considering the need to review the structure and generic content of CSG-activity licences within two years after the new requirement commences or as soon as possible after that time. This will be with a view to ensuring the EPA appropriately and efficiently regulates potential CSG-related environmental impacts.	No amendments required.
Transitional provisions: • Oppose the reduction in the grace period from nine months to three months as it will not provide time for submitting and receiving an EPL and may cause significant costs if operations are stalled.	Noted. The reduction in time is required to allow the NSW Government to meet its commitment for the EPA to be the lead regulator for the CSG industry's environmental performance as quickly as possible. It will also help more swiftly restore the community's confidence in the way the industry is regulated.	No amendments required.
Defining the premises: • A single EPL should be issued for each PEL to regulate all exploration activities, apart from pilot projects, and that this EPL be reviewed periodically for any new pilot projects.	Noted. The definition of a licensed premise is a policy position the EPA is continuing to refine; the option of an EPL for each PEL is being considered.	No amendment required.
Future licence conditions: • Riverine discharges of CSG-produced water should be conditioned to meet 95 per cent level of species protection of the ANZECC guidelines. • Air discharges need to include a mandatory condition for continuous monitoring at source (wells), including a specific condition for monitoring methane emissions.	Suggestions can be considered by relevant EPA Regional operations staff on a case-by-case basis in the licensing process. The type and form of EPL conditions is an operational policy decision by the EPA and cannot be included as part of the regulatory amendments as this will not provide the case-by-case flexibility needed	No amendment required.

7 Recommendation

Based on the EPA's consideration of all the options (see section 4) and of costs (see section 5), along with the results of consultation (see section 6), the EPA recommends proceeding with the Amendment Regulation.

This proposal represents the greatest net benefit (and least cost) to the community. The rationale for the proposal can be summarised as follows:

1. It implements the NSW Government's decision that the EPA will be the lead regulator of environmental and associated health impacts of CSG activities.
2. There is widespread community concern about CSG activities and its potential impacts on the environment.
3. Regulating the environmental impacts of CSG activities is complex and requires significant expertise to assess and manage issues when they arise.
4. The Government anticipates an increase in the number of CSG activities in NSW over the coming decade.
5. Local councils report they do not have the resources or expertise to effectively deal with CSG activities. Without significant capacity building, councils are likely to continue to struggle to meet the community's and industry's expectations of credible regulation.
6. The proposal will provide a simple and transparent regulatory framework rather than the current regulatory framework, which is complex and involves multiple agencies and authorities providing multiple approvals.
7. As the State's dedicated environmental regulator, the EPA is better placed to meet this growing regulatory demand. The POEO licensing regime is well established, strong, flexible, proven and fit-for-purpose.
8. The proposed licence administrative fees are relatively low and will not place unreasonable costs on the CSG industry.
9. The proposal will not place an unreasonable administrative burden on the EPA as the regulator and it is a more efficient approach compared to local councils continuing to have the ARA role into the future.
10. The benefits of consistent and credible regulation for the CSG industry and the community outweigh the costs of increased regulatory and administrative burden (which are not significant).

8 Implementation and enforcement

The change will be implemented through amending Schedule 1 of the *Protection of the Environment Operations Act 1997* to create new activities for CSG exploration and CSG assessment and production. An amendment is also proposed to Schedule 1 of the *Protection of the Environment Operations (General) Regulation* 2009 to set fees and list assessable pollutants.

The EPA is developing a communications strategy for implementation. Issues raised as part of consultation on the Amendment Regulation will be specifically considered when developing this information. Information will also be prepared for EPA regulatory officers, local Government, DP&I and the general public.

Penalties for non-compliance with licence or statutory requirements will be in line with the existing provisions of the POEO Act. Compliance and enforcement approaches will be in line with existing EPA policy and procedures.

9 Evaluation and review

The provisions of the POEO Act and POEO General Regulation will be periodically reviewed as per existing legislative requirements.

Ongoing information, policy and procedural needs will be assessed regularly or as issues arise, as per the EPA's existing continuous improvement processes.