CROWN MINERALS ACT 1991
MINERALS PROGRAMME FOR MINERALS (EXCLUDING PETROLEUM) 2013

Guidance on the consideration of Health and Safety under the Crown Minerals Act

Changes made to the Crown Minerals Act (the "**Act**") in May 2013 included amendments that required both specific and general considerations of health and safety matters. These changes were made directly in response to the findings of the Pike River Royal Commission on the Pike River Tragedy. Prior to 2013, the Act focussed solely on the allocation of the minerals estate and did not include consideration of health and safety matters.

Changes have also been made to the Health and Safety at Work Act 2015 (H&SaW) and regulations made under that Act.

With respect to the Act, a key policy driver behind the changes was to construct joining points between the Act and the H&SaW and the respective regulatory agencies, New Zealand Petroleum and Minerals (NZP&M) and WorkSafe New Zealand (WorkSafe).

PURPOSE

This document provides information on the legislative context of health and safety under the Act and the health and safety matters that NZP&M takes into consideration when assessing mineral permit applications.

LEGISLATIVE CONTEXT

Health and safety is considered in four ways by the Act:

- Specific consideration of health and safety capability of the applicant at the time of grantv of a Tier 1 permit or change of operator of a Tier 1 permit consequent on the transfer of a permit (*section 29A - Process for considering applications and section 41C - Change of permit operator*).
- Consideration of health and safety as part of good industry practice[1], which is much broader than the point above and allows wide discretion in its application to evaluation of relevant permit applications. The concept applies to all applications and permits.
- The responsibility of all permit holders to comply with the H&SaW and regulations made under that Act (*section 33 – Permit holder responsibilities*).
- The exercise of permit activities being conditional on clearance from WorkSafe (*section 33A of the Act – Exercise of permit conditional on clearance of the health and safety regulator*)

The Act legislation relevant to health and safety is given in **Appendix 1**.

APPLICABLE GUIDELINES

The specific requirements under *section 29A and s 41C* of the Act, that the Minister must be satisfied that a proposed Tier 1 permit holder has, or is likely to have, appropriate health and safety systems in place before an operation begins, is a legislated interaction between NZP&M and the health and safety regulator, WorkSafe New Zealand. The assessment is based on information supplied by the applicant.

The more general requirement of the Act and Minerals Programme for Minerals (Excluding Petroleum) (the "**Minerals Programme**") to consider health and safety under good industry practice[1] is more complex and requires assessment by NZP&M of risks that are geotechnical in nature and sit at the interface between the Act and the H&SaW and the respective regulatory agencies. There is no one approach to this that suits all situations.

1 *Good industry practice is covered in a separate guideline.*

Section 29A and s 41C health and safety requirements

Assessment of the health and safety-related requirements of *section 29A and section 41C* are legislated interactions between NZP&M and the health and safety regulator, WorkSafe New Zealand. WorkSafe has devised specific requirements that allow it to assess the health and safety capability of a Tier 1 application in order to advise NZP&M whether the tests are met or not. The information is requested by NZP&M[2]. If the advice is equivocal, NZP&M must consider whether the test has been met. Appendix 2 explains the health and safety capability assessment performed by WorkSafe for NZP&M.

Sections 29A and s 41C are not intended to duplicate the powers of the H&SaW. The health and safety assessments required under the Act are high-level processes designed to identify serious health and safety risks at an early stage. The process also encourages cooperation between regulators.

Good industry practice and health and safety

The Act defines good industry practice, in relation to an activity, as meaning "acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity and under similar circumstances, but (for the purposes of this Act) does not include any aspect of the activity regulated under environmental legislation".

Under Clause 1.3(11) of the Minerals Programme, the Minister interprets good industry practice to include (without limitation) the following:

- Personnel and procedures
- Operational
- Risk Management, including health and safety
- Acquisition of data

In order to grant an application, NZP&M must be satisfied that the proposed work programme is consistent with good industry practice, which includes assessing whether the applicant will be operating at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity. This will necessarily involve assessments of the health and safety of the proposed operations.

Health and safety matters become most critical during mining, rather than exploration or prospecting. Mining work programmes may be for opencast mining, where the main risks are pit wall and overburden dump stability, or underground mining where roof stability is a major risk. For underground coal mines, inadequate gas management is a major risk. These technical considerations are related to mine design and resource recovery. In practice it is difficult to separate good industry practice into its "geotechnical" components and "health and safety" components, as the two are necessarily interrelated.

A key point at which these meet, from a regulatory perspective is in the content of Principal Hazard Management Plans required under the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016. The content of these plans, depending on the scale of the operation, is likely to include extensive mine design and hazard mitigation information that is useful for the general assessment of good industry practice and all that it can entail. The content is also most important for demonstrating that the operator has systems and processes in place to avoid, mitigate and manage operational risks, including health and safety risks (clause 1.3(11) of the Minerals Programme).

Principal Hazard Management Plans (PHMPs) are regulated by WorkSafe. Under s 29A of the Act, NZP&M is not required to duplicate any assessment process that a regulatory agency may be required to undertake in accordance with a specified Act. The PHMPs may in fact be required by WorkSafe before it can provide a view to NZP&M under s 29A that it has or is likely to have appropriate health and safety systems in place. The relevant PHMPs can be important in assessing good industry practice under the Act. Furthermore, the technical review of an application by NZP&M can identify weaknesses and risks the health and safety regulator may be unaware of, and through liaison between NZP&M and WorkSafe, can be signalled and incorporated into WorkSafe's regulation of Principal Hazard Management Plans.

The Act authorises NZP&M to ask an applicant for health and safety information that it requires to be satisfied that the mining operation will be developed and operated in accordance with good industry practice[2]. NZP&M will request whatever information is required to come to a conclusion as to whether that standard has been met.

2 *An information template used for this process is available on the NZP&M website.*

APPENDIX 1: Extracts from the Act and Minerals Programme for Minerals relating to Health and Safety

Section 29A Process for considering application

(2) Before granting a permit, the Minister must be satisfied—

(d) in the case of a Tier 1 permit for exploration or mining, that the proposed permit operator has, or is likely to have, by the time the relevant work in any granted permit is undertaken, the capability and systems that are likely to be required to meet the health and safety and environmental requirements of all specified Acts for the types of activities proposed under the permit.

(3) For the purposes of the Minister satisfying himself or herself of the matter in subsection (2)(d), the Minister—

(a) is only required to undertake a high-level preliminary assessment; and

(b) must seek the views of WorkSafe and may, but is not required to, obtain the views of any other regulatory agency; and

(c) may, but is not required to, rely on the views of the regulatory agencies; and

(d) is not required to duplicate any assessment process that a regulatory agency may be required to undertake in accordance with a specified Act.

(4) To avoid doubt, subsection (2)(d) does not limit, have any effect on, or have any bearing on—

(a) whether the permit holder or permit operator is required to obtain any permit, consent, or other permission under any health and safety or environmental legislation:

(b) the granting to the permit holder or permit operator of any permit, consent, or other permission necessary under any health and safety or environmental legislation by any government agency, consent authority, or Minister responsible for the administration of that legislation.

Section 33 Permit holder responsibilities

(1) A permit holder must—

(a) comply with—

(iii) the Health and Safety at Work Act 2015 and regulations made under that Act; and

(b) perform activities under the permit in accordance with good industry practice;

Section 33A Exercise of permit conditional on clearance from WorkSafe

(1) Subsection (2) applies if the Health and Safety at Work Act 2015, or regulations made under that Act, expressly provide that WorkSafe must give its approval or consent before an activity can be carried out and the activity is an activity of a type authorised under a permit.

(2) Despite the activity being authorised under a permit, it must not be carried out until—

(a) WorkSafe has given its approval or consent (in respect of the requirements of the Health and Safety at Work Act 2015 or regulations made under that Act); and

(b) WorkSafe has advised the chief executive that it has given its approval or consent; and

(c) the chief executive has notified the permit holder of WorkSafe's advice.

This provision is referred to in the Minerals Programme for Minerals 2013 as follows:

4.15 Clearance from Health and Safety Regulator

(1) Section 33A of the Act provides that, where an activity authorised by a permit requires the approval or consent of the Health and Safety Regulator under the Health and Safety at Work Act 2015 (or regulations made under that Act) before it can be carried out, that activity must not begin under the permit until the Chief Executive has notified the permit holder that the Health and Safety Regulator has given its approval or consent.

Section 41C Change of permit operator

(3) The Minister may give consent to the change only—

(b) if the change of operator relates to a Tier 1 permit for exploration or mining, if WorkSafe—

(i) is satisfied that any requirements of the Health and Safety at Work Act 2015, or regulations made under that Act, that the proposed operator must meet before carrying out day-to-day management of activities under the permit have been, or are likely to be, met; and

(ii) has advised the chief executive that it is so satisfied.

APPENDIX 1: Extracts from the Act and Minerals Programme for Minerals relating to Health and Safety *continued...*

GOOD INDUSTRY PRACTICE AND HEALTH AND SAFETY

Section 29A Process for considering application

(2) Before granting a permit, the Minister must be satisfied

Before granting a permit, the Minister must be satisfied—

(a) that the proposed work programme provided by the applicant is consistent with—

(iii) good industry practice in respect of the proposed activities

Section 2(1) interpretation of good industry practice

The Act defines good industry practice as follows:

"Good industry practice, in relation to an activity, means acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity and under similar circumstances, but (for the purposes of this Act) does not include any aspect of the activity regulated under environmental legislation".

Minerals Programme for Minerals

1.3 (11) The Minister interprets "good industry practice" for minerals (excluding petroleum) to include (without limitation) the following:

Risk management

(e) The operator has systems and processes in place to avoid, mitigate and manageoperational risks, including health and safety risks.

Under general matters to be considered for assessment of work programmes proposed in applications for exploration and mining (but not specifically prospecting), the Minerals Programme for Minerals requires:

9.3(1)(d) whether the proposed exploration is in accordance with good industry practice; and 10.2 (1) (g) whether the proposed mining operations are in accordance with good industry practice.

APPENDIX 2: Assessment of health and safety capability of a proposed operator of a Tier 1 exploration or mining permit

Background

1. The regulatory framework for the allocation and management of rights to prospect, explore for and mine for petroleum and minerals in New Zealand has recently undergone a review.
2. A key part of the changes introduced to the Crown Minerals Act 1991 (**Act**) and associated regulations and minerals programmes in May 2013, is the introduction of a high-level health, safety and environmental capability assessment at the permit award stage. This is not intended to remove or pre-determine or affect any requirements that the holder of a permit under the Act will need to meet under the relevant health and safety or environmental legislation relating to the activities under the permit. A capability assessment is also required upon seeking a change of operator under section 41C of the Act.
3. The capability assessment is intended to ensure that Tier 1 exploration and mining permits are awarded to and operated by those who are likely to have the capability to meet the relevant health, safety and environmental regulatory requirements associated with the permit activities, at the time the activities are to be undertaken.

Assessment of health and safety capability under the Act

4. Sections 29A, 29B and 41C of the Act require the Minister to be satisfied of certain capabilities of a proposed operator of a Tier 1 exploration or mining permit.
5. Before granting a new Tier 1 exploration or mining permit, the Minister must be satisfied that the proposed permit operator **has, or is likely to have,** by the time the relevant work in any granted permit is undertaken, the **capability and systems** that are likely to be required to meet the health and safety requirements of all specified Acts for the types of activities proposed under the permit (**H&S capability**).
6. In satisfying himself of the proposed operator's health and safety capability, section 29A(3) of the Act provides that the Minister:
   (a) is only required to undertake a high-level preliminary assessment;
   (b) must seek the views of the Health and Safety Regulator and may (but is not required to) rely on those views;
   (c) is not required to duplicate any assessment process that a regulatory agency may be required to undertake under a specified Act (such as the Health and Safety at Work Act 2015).
7. The Act provides that satisfaction of the proposed operator's H&S capability for the purposes of the Act does not limit or have any effect or bearing on the requirements of the relevant health and safety legislation in relation to the activities (section 29A(4)).
8. The Minister may consent to a change of operator of a Tier 1 exploration or mining permit only if the Health and Safety Regulator has advised NZP&M that it is satisfied that any requirements of the Health and Safety at Work Act 2015, or regulations made under that Act, that the proposed operator must meet before carrying out day-to-day management of activities under the permit have been, or are likely to be, met.

NEW ZEALAND PETROLEUM & MINERALS

www.nzpam.govt.nz
nzpam@mbie.govt.nz

PO Box 1473, Wellington 6140, New Zealand

FREEPHONE (WITHIN NEW ZEALAND): 0508 263 782
INTERNATIONAL CALLS: +64 3 962 6179 FAX: +64 4 471 0187

NZP&M is a division of the Ministry of Business, Innovation and Employment. We lead and actively manage New Zealand's petroleum and minerals portfolio ensuring the country's economic interests and assets are comprehensively protected. Our goal is to use our wider understanding of the energy and resources sector to increase national and regional prosperity via petroleum and minerals exploration and production.

As a government agency, we engage with Councils, iwi and communities about petroleum and minerals development and regulation of the industry. We manage compliance and revenue collection on behalf of the Crown and aim to maximise the return that these important industries deliver for the benefit of all New Zealanders.

We report to the New Zealand public through the Minister of Energy and Resources.