



Environmental Defenders Office

Environmental Assessment and Approval of Methane Gas and Fracking Activities in the NT

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Overview

The NT government is currently receiving Environmental Management Plans (**EMPs**) for methane gas and fracking exploration activities. An EMP is a form of environmental approval that is required before the activity can start. Under recent changes to the law, EMPs for drilling and fracking activities must be placed on public exhibition for 28 days.¹ Any person can make a submission on the EMP.

This factsheet focuses on the legal requirements related to an EMP for methane gas and fracking activities. If the activity has the potential for significant impact on the environment, assessment may also be required under the [Environment Protection Act 2019 \(NT\) \(EP Act\)](#).

Visit: [The NT Department of Environment, Parks and Water Security's Environment Management Plan page](#) for more information on EMPs

What is the EMP application process?

The [Petroleum \(Environment\) Regulations 2016 \(NT\) \(PER\)](#) establish the approval process for EMPs. An interest holder (i.e. the gas or fracking company) planning to carry out a 'regulated activity' must submit an EMP to the Minister for the Environment (**Minister**). A regulated activity is an activity in connection with a technical works programme for a petroleum interest (i.e. oil or methane gas), that has or will have an environmental impact or risk.² Environmental impact is defined in the PER as any adverse change, or potential

¹ *Petroleum (Environment) Regulations 2016*, cl 8A (**PER**).

² *Ibid*, cl 5.

adverse change, to the environment resulting wholly or partly from a regulated activity.³ In the context of methane gas exploration, a regulated activity could include, for example, land clearing, earthworks, establishing seismic lines or drill pads, exploratory drilling, fracking, release of a contaminant/waste, and storage/transport of petroleum or hazardous substances.

An EMP may be submitted for approval after stakeholder engagement has been carried out. 'Stakeholder' means a person or body whose rights or activities may be directly affected by the environmental impacts or risks of the regulated activity; or an agent or representative of such a person or body.

To comply with the stakeholder engagement requirements, the interest holder (e.g. the oil or gas company) must:

- (a) give each stakeholder information about:
 - (i) the regulated activity the interest holder proposes to carry out;
 - (ii) the location (or locations) where the activity is proposed to be carried out;
 - (iii) the anticipated environmental impacts and risks of the activity;
 - (iv) the proposed environmental outcomes in relation to the activity, and;
 - (v) possible consequences of the activity on the stakeholder's rights or activities, and;
- (b) allow a reasonable period for the stakeholder to respond to the information given.⁴

Methane gas or fracking activities that the Minister for Environment considers are likely to have a significant effect on the environment must be referred to the NT Environment Protection Authority (**NT EPA**),⁵ which may require an environmental impact assessment to be prepared under the EP Act.

In addition, if an activity has, will have or is likely to have a significant impact on certain aspects of the environment it must be referred to the Commonwealth Environment Minister under the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).⁶ The NT Minister can require further information to be provided.⁷

Where it relates to the drilling of a methane gas well or fracking, an EMP must be released for public comment for 28 days. Submissions are made to the NT Minister. There are some exceptions to this publication requirement including for modifications or plans relating to the drilling of a water bore.⁸

³ PER, cl 3.

⁴ Ibid, cl 7.

⁵ [Environment Protection Act 2019 \(NT\)](#), s 29(2).

⁶ [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#), s 11.

⁷ PER, cl 10.

⁸ Ibid, cl 8A, 8B.

The public comments received by the Minister must be published. The Minister must then:

- make a decision within 90 days to approve the EMP, or;
- give the interest holder a resubmission notice, or;
- extend the time to consider the EMP.⁹

The NT EPA is required to provide advice to the Minister on each EMP for fracking activities in accordance with its responsibilities under the [Northern Territory Environment Protection Authority Act 2012 \(NT\)](#).¹⁰

What information must be included in an EMP?

An EMP must include a summary of the plan followed by comprehensive information about all matters necessary to be included in order to meet the approval criteria.¹¹

The summary of a plan must include the following:

- (a) a description of the regulated activity to which the plan relates;
- (b) the location (or locations) of the activity;
 - (ba) if the activity involves fracking – the details about any chemical or other substance that may be in, or added to, treatment fluids used in the course of the activity;
- (c) the existing environment that may be affected by the activity;
- (d) the environmental impacts and risks of the activity;
- (e) the environmental outcomes in relation to the activity;
- (f) a list of stakeholders with whom the interest holder has carried out stakeholder engagement;
- (g) information about the stakeholder engagement carried out and future stakeholder engagement.

In addition, the matters listed in Schedule 1 of the PER must be addressed by the EMP.

⁹ PER, cl 11.

¹⁰ [Northern Territory Environment Protection Authority Act 2012 \(NT\)](#), ss 29B-29D.

¹¹ PER, Sch 1, cl 1-9.

How does the Minister decide?

The Minister can only approve an EMP if the Minister is reasonably satisfied that the approval criteria have been met, which are:¹²

1 – The EMP includes all information required under Schedule 1

This includes a description of the regulated activity, description of existing environment, assessment of environmental impacts and risks (including cumulative impacts), environmental outcomes and environmental performance standards, and chemicals used in the course of fracking (if relevant).

The EMP must demonstrate how all 'legislative requirements' will be met. This includes the *Code of Practice for Onshore Petroleum Activities*.

The EMP must also include an Implementation Strategy, information about stakeholder engagement, and arrangements for recording, monitoring and reporting information.

Visit: [The NT Department of Environment, Parks and Water Security's page on Code of Practice: Onshore Petroleum Activities in the NT to read the Code and learn more](#)

2 – The EMP is appropriate for the nature and scale of the regulated activity

3 – The EMP demonstrates that all environmental impacts will be reduced to a level that is 'as low as reasonably practical' and 'acceptable'

When considering the last point, the Minister must take into account the principles of ecologically sustainable development (**ESD**), and each environmental assessment recommendation (by the NT EPA) if an environmental report or statement has been prepared under the EP Act.¹³

The Minister must take into account comments received through public exhibition.¹⁴

What happens next?

If the Minister is satisfied that the EMP meets the approval criteria, the Minister must approve the plan, with or without conditions.¹⁵

If the Minister is not satisfied that the EMP meets the approval criteria, the Minister must give the interest holder a resubmission notice or refuse to approve the plan.

¹² PER, cl 9.

¹³ Ibid, cl 5A.

¹⁴ Ibid, cl 11.

¹⁵ Ibid, cl 11.

The Minister must publish a statement of reasons with an approval or refusal notice.¹⁶

There are currently no merits appeal rights available for third parties against the Minister's decision. The Final Report of the Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory recommended that the NT Government provide merits appeal rights for third parties prior to any *production* activities being permitted to commence in the NT.

¹⁶ PER, cl 12-13.