Tenure Matters

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Welcome back. This month I want to talk about compliance, or more specifically the ineffectiveness of non-compliance actions that the Government can take against holders of petroleum tenures.

Section 790 of the *Petroleum & Gas (Production & Safety) Act 2004* outlines the types of non-compliance action that may be taken when authorities (under section 19 this term includes ATPs, PLs DAAs, WAAs, PSLs, PPLs and PFLs) are non-compliant. These actions may include:

- Amending the authority by reducing the term;
- Reduce the area for a petroleum authority;
- Impose new conditions;
- Require relinquishment of a stated part of the area on or before a stated time;
- Cancelling the authority, immediately or on a stated day;
- Withdrawing approval of a work program or development plan;
- Requiring the lodgement of a new work program or development plan;
- Requiring the holder to pay a penalty of no more than 2000 penalty units[1].

When a particular non-compliance is related to a failure to complete a work program, then penalties that include additional relinquishment, reduction in term, or additional work commitments have some direct relevance to the problem they are attempting to address. How effective these are is another matter.

However, when the non-compliance is related to activity-based reporting, such as well completion reports, none of the non-compliance options **actually achieve the desired outcome**, which is a well-written, comprehensive well completion report with robust data.

[1] Defined in section 5 of the *Penalties and Sentences Act 1992*. Value prescribed in the Penalties and Sentences Regulation 1992, section 3, currently $117.80. 2000 penalty units therefore equates to $235,600

Those of us who have studied some kind of managerial psychology, or even been parents, will no doubt have heard of the "hot-stove rule", first described by Douglas McGregor[2]. The rule uses the analogy of a hot stove to describe the approaches to discipline. There are four characteristics of the hot-stove:

1. When you touch the hot stove the burn is immediate, cause and effect is therefore clear;
2. You had warning, i.e. you knew the stove was hot so you knew what to expect;
3. Every time you touch the hot stove the effect is the same, i.e. the punishment is consistent;
4. It doesn't matter who touches the hot stove, the effect is the same, i.e. everyone gets burnt.

Additionally, the remedial action needs to be appropriate – i.e. missing reports or data will be provided as a result of the action taken by the Department.

At least some of these principles are sadly lacking in the non-compliance options outlined above:

- non-compliance action is rarely timely;
- 'punishment' is seen to be somewhat inconsistent; and
- the effect is not always the same.

From an authority holder's perspective this adds uncertainty; and impedes learning. From the Department's perspective, the available 'punishment' does not always achieve the result desired, i.e. the provision of data or reports.

Typically, non-compliance action taken by the Department is actually the result of cumulative non-compliance, and it may not be clear to a company's management all the components that contribute to the action, or the relative importance to the Government of the various components of the non-compliance. This can also make it difficult for companies to manage their compliance effectively.

The issue of substantial compliance has always been vexed; the Act never attempted to define what was meant by substantial compliance. It was not until 2012 that the Department issued an Operational Policy on compliance: *Operational Policy 3/2012 Strict compliance and substantial compliance*[3]. This policy sets a very high bar for substantial compliance; which increases the likelihood of a holder being found to be not in strict compliance. We are overdue for a discussion about what should constitute substantial compliance.

So potentially what actions could be taken by the Department to achieve effective compliance in the case of incomplete or poor quality reporting or data?

- Could the Department enforce the use of a third party at the company's expense to complete the outstanding reporting? This may be effective if the data actual exists, but if poor record keeping practices have resulted in the loss of key data or its corruption, this may not be recoverable.
- In the case of third party service providers who acquired the data on behalf of the company, such as a wireline logging company, or a seismic acquisition company, could the Department justifiably go directly to the service provider for the outstanding data?

[2] See http://www.whatishumanresource.com/hot-stove-rule
[3] https://www.business.qld.gov.au/industry/mining/applications-compliance/policies-guidelines

- In a scenario where individual activities are approved – could the approval be conditional on previous outstanding reports being completed (for example, an extended production test approval depends on the completion of previous reporting)?

The first step is undoubtedly an in-depth look at what data and information should be required; the role of the State as a data/information custodian; and best practice for the storing of data so it is available for later re-evaluation or new techniques. Just look at how much reprocessing of seismic data has been undertaken across the State; and then consider how much more might have been done if the original data was stored and inventoried as effectively as possible. We all know that some data held by the Department has been lost, or is at least unable to be located; or the data is not salvageable. At best, it has taken an unacceptable amount of time in the past to locate the data for reprocessing.

The Industry Reporting Reform Project has at its core the idea of assessing what data/information the Government truly requires; identifying the duplication and the gaps; and creating processes and systems that robustly manage the data/information that is required and lodged by industry. There is undoubtedly some data/information that is collected currently that is not particularly relevant, or provided in a way that would make it relevant. It is equally valid to say, that the Government makes the land available to industry to explore and produce on its behalf – the provision of data/information is part of the arrangement, and it may not always be obvious what data/information will become important in the future.

Nevertheless, none of this solves the problem of industry not providing data, or not providing it in a useful and accurate format. It costs so much money to acquire the data/information from, for example, a well – it seems wasteful beyond belief that we don't value it enough to ensure its accuracy, and its potential for later re-use.

I am happy to hear suggestions about topics you would like covered. Feel free to email me at sue.slater@rlms.com.au with the subject heading Tenure Matters.

In the meantime, remember "Tenures make the Project; the Project doesn't make the Tenures".

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