



Department of **Mines,**
Petroleum and Exploration

Applying to add regulated substance rights to a petroleum title

Guideline

Purpose

To provide guidance on applying to include the rights to explore for or recover a regulated substance on a petroleum title.

Legislative framework

The *Petroleum, Geothermal and Greenhouse Gas Storage Act 1967* (PGEGGSA) and the *Petroleum and Greenhouse Gas Storage (Submerged Lands) Act 1982* (PGGS(SL)A) (together, “the Acts”) include provisions that provide for exploration and recovery of regulated substances in Western Australia.

Rights to explore for and recover a regulated substance (Regulated Substance Rights) can be authorised under either a new or existing petroleum title, however, the addition of Regulated Substance Rights is not automatic.

A new applicant may, at the time of application for a new petroleum title, request Regulated Substance Rights.

Existing holders of specific titles may apply to the Minister for Mines and Petroleum (the Minister) seeking to add Regulated Substance Rights to the rights conferred by their petroleum title. These titles are:

- petroleum exploration permit
- petroleum drilling reservation
- petroleum retention lease
- petroleum production licence
- petroleum access authority
- petroleum special prospecting authority (SPA), or special prospecting authority with acreage option (SPA/AO).

Holders of a granted petroleum SPA or SPA/AO should note that these titles are issued for a fixed 6-month period that cannot be paused or extended. Requests to add Regulated Substance Rights may not be able to be completed prior to the expiry of the title.

The holder of a petroleum SPA/AO can apply to add Regulated Substance Rights at the time of making an application for an exploration permit or drilling reservation regardless of whether their SPA/AO included Regulated Substance Rights.

What is a regulated substance?

Section 5 of the PGEGGSA and section 4 of the PGGS(SL)A, define a regulated substance as a naturally occurring substance that:

- occurs in a natural geological formation; and
- is prescribed by the Regulations¹.

Presently, only naturally occurring hydrogen and helium are prescribed by the Regulations as a regulated substance that may be authorised on a petroleum title. Other regulated substances may be prescribed in the future.

Applying for a new title

The request to extend the rights of any new petroleum title to include Regulated Substance Rights must be included on the application form at the time of lodgement, via the Petroleum, Geothermal and Greenhouse Gas Register (PGGGR). This includes any application to renew or convert an existing petroleum title.

Regulated Substance Rights cannot be added to a petroleum title application that has been lodged but has not been granted, as the particulars of an application cannot be amended once lodged (unless the Acts provides specific mechanisms to allow it). However, once the title is granted, the holder may apply to add Regulated Substance Rights to the title.

Standard fees apply for applications for new titles that will include Regulated Substance Rights. Fees are subject to increase on 1 July each year, so prospective applicants are recommended to check the latest fee schedule on the department's website.

¹ Regulations refers to the Petroleum, Geothermal and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2015 or the Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2015, as the case requires.

Applying to add Regulated Substance Rights to an existing petroleum title

Existing petroleum title holders can apply to the Minister in writing to add Regulated Substance Rights to a granted title. The application must:

- be lodged on an approved form, via the Petroleum, Geothermal and Greenhouse Gas Register (PGGGR);
- specify the regulated substance(s) being requested;
- include any relevant particulars, such as any geological or technical information the applicant already holds that indicates the potential presence of the regulated substance(s) within the title area (for example, data from previous petroleum wells, logs, cuttings, gas analyses, regional geological information, or other relevant assessments); and
- set out any other matters the applicant wishes the Minister to consider.

No fee is payable to apply to add Regulated Substance Rights to an existing petroleum title.

Assessment of request to add Regulated Substance Rights to an existing petroleum title

Applicants should demonstrate sufficient technical capacity and competence to manage Regulated Substance Rights in line with current industry practice and regulatory requirements. This includes evidence of relevant expertise and experience of key personnel and contractors, supported by examples of previous involvement in resource activities. Technical capability statements should address any unique challenges likely to arise during an exploration program.

Applicants should also provide a geological evaluation and exploration rationale that underpins their proposed work program that addresses regulated substances. The applicant must clearly demonstrate how the activities will address identified exploration risks and materially improve the understanding of potential systems, plays, prospects and leads within the permit area.

Applicants may include additional relevant matters for the Minister's consideration, such as required statutory approvals, stakeholder engagement approaches, the presence of subsisting titles, and any potential constraints on undertaking the work program. Information on past involvement in exploration or development activities, including performance against work commitments, may also be provided.

Regulated Substance Rights, and any associated work program activities, are considered in addition to, and assessed separately from, any existing petroleum exploration work program commitments. They do not replace, reduce, or offset the exploration obligations that already apply to petroleum exploration permits.

Where an applicant seeks to amend an existing petroleum work program, this must occur through the established statutory process for varying work program commitments. Any such variation must be considered and approved by the Minister (or delegate) under the applicable legislative provisions. Importantly, the process for varying petroleum work commitments is distinct and independent from any request to include Regulated Substance Rights, and approval of one does not imply or facilitate approval of the other.

Native Title considerations

An application for a new petroleum title that includes Regulated Substance Rights must be notified in accordance with the requirements of section 29 of the *Native Title Act 1993* (NTA).

Before the Minister can approve the addition of Regulated Substance Rights to an existing petroleum title, the application must be notified in accordance with the requirements of section 29 of the NTA.

The Minister will not grant an application to add Regulated Substance Rights to an existing title until the NTA requirements are finalised.

Approval of regulated substances

When approving the addition of Regulated Substance Rights to an existing title, pursuant to section 91C of the PGEGGSA and section 97B of the PGGS(SL)A, the Minister may vary the conditions to which the petroleum title is subject, including imposing new conditions or removing conditions.

Examples could include conditions relating to:

- exploration methods or restrictions;
- requirement to continue to explore for petroleum; and/or
- adding work program elements related to Regulated Substance Rights.

If the Minister approves the addition of Regulated Substance Rights to an existing petroleum title, the Minister will provide the title holder with a memorial instrument evidencing the approval. This memorial instrument will be made publicly available on PGGR against the title.

Timeframes

Assessment of an application for a new title that includes Regulated Substance Rights will be in line with the established new application timeframes (120 business days).

Assessment of an application to add Regulated Substance Rights to an existing petroleum title is expected to be completed within 40 business days, however, factors that may affect this timeframe include, but are not limited to:

- receiving a valid and complete application, whereby little or no further additional information is required to be provided; and
- notification pursuant to the NTA.

Secondary approvals

After approval to add Regulated Substance Rights to an existing title is granted, registered holders should consider whether any existing secondary approvals are required to be resubmitted.

Further information

If you have any further queries regarding the information contained within this guideline, contact the Resource Tenure Division by email at petroleum.titles@dmpe.wa.gov.au.

Government of Western Australia

Department of Mines, Petroleum and Exploration

8.30am – 4.30pm

Mineral House, 100 Plain Street
East Perth, Western Australia 6004
Tel: +61 8 9222 3333
Fax: +61 8 9222 3862

Online

Website: www.dmpo.wa.gov.au

Mailing address

Locked Bag 100
East Perth WA 6892

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