



File 175-A000-17  
20 October 2005

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### **Comments on the Draft Goal Oriented Drilling and Production Regulations (DP Regs)**

The Project Working Group<sup>1</sup> (PWG), thanks the Canadian Association of Petroleum Producers (CAPP) for its letter of comment, dated 29 June 2005, concerning the six sections of the Draft Goal Oriented Drilling and Production Regulations. On behalf of the PWG, the National Energy Board (NEB) is pleased to provide a response.

#### **Project Update**

The Federal Department of Justice is currently working closely with NEB staff to prepare the entire draft of the DP Regs for the legislative review process. The focus of this work is to ensure that the wording of the regulation is legally appropriate for publication in the Canada Gazette, leading to eventual promulgation of the regulation. Concurrent with the Justice review of the "non-goal oriented" sections of the DP Regs, the PWG drafting the goal oriented sections. The intent of the PWG is to replace the current non-goal oriented sections of the DP Regs with the goal oriented sections, the result being one complete goal oriented draft of the DP Regs. It is now expected that the complete draft will be available for review by CAPP in early 2006. However, prior to completion of the consolidated draft, additional consultation on the goal oriented sections will occur, as discussed in this letter.

#### HSE Case and Formation Flow Testing

In both the CAPP letter and the preceding 27 May 2005 conference call, there was discussion regarding formation flow testing and the incorporation of the requirement for an HSE Case within the DP Regs. Both of these issues are being dealt with outside the immediate context of

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<sup>1</sup> National Energy Board, Natural Resources Canada, the Province of Newfoundland and Labrador, the Province of Nova Scotia, the Canada-Newfoundland Offshore Petroleum Board, the Canada-Nova Scotia Offshore Petroleum Board, and the Department of Indian Affairs and Northern Development.

the DP Regs project; however, the results of any such initiatives related to these issues will be incorporated within the DP Regs. The Frontier and Offshore Regulatory Renewal Initiative<sup>2</sup> (FORRI) has been working on the formation flow testing issue and it is expected that changes to the Drilling Regulations under the frontier acts<sup>3</sup> will be forthcoming. As you are aware, the HSE Case issue will be discussed at the upcoming workshop in Halifax on 18 and 19 October 2005.

### **CAPP's Comments on the Six Goal Oriented Sections**

Following is the PWG's response to CAPP's comments under the "General Comments" section of your letter. As discussed between Kent Lien of the NEB and yourself on 28 September 2005, a detailed response to all of CAPP's comments will be forthcoming. Upon receipt, CAPP and the PWG can plan the next steps in the consultation process.

#### **1. Scope of Review**

As noted, the PWG anticipates that a complete draft will be available for CAPP's review in early 2006. Approximately 2 months will be allowed for review.

Regarding guidance documents, this phase of the DP Regs project will begin in earnest in early 2006. It is the full intention of the PWG that guidance for the regulations will be available at the time of the regulations' promulgation. CAPP's involvement in the writing of the guidance notes is encouraged and the PWG will be discussing this matter with CAPP.

#### **2. Document Structure**

It is not practical to format the regulations in the format suggested due to resource constraints and limitations associated with developing wording which would still be legally appropriate for the legislative review process. However, it may be possible to develop the guidance notes along the lines suggested by CAPP. We can discuss this during our work on the guidance notes.

#### **3. Clear Statement of Goals Required**

The PWG notes that it has articulated the goal for each section, usually at the start of the section. However, if these statements require clarification, we are open to further discussion.

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<sup>2</sup> Comprised of the same stakeholders as the PWG and representatives from several other provincial and territorial governments.

<sup>3</sup> *The Canada Oil and Gas Operations Act; the Canada-Newfoundland Atlantic Accord Implementation Act; the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act; the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act; and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act.*

#### 4. Hybrid Approach Requires Separate Processes and Resources

Though the PWG does not agree that dual regulatory processes will need to be maintained, it does agree that there are different process and resource requirements for goal based versus prescriptive regulations. The PWG has been discussing this issue and welcomes CAPP's comments as to how to best address it.

#### 5. Future Guidelines to the Regulations Should not be Prescriptive

By their very nature, guidance notes are not generally prescriptive. Rather, they are meant to demonstrate one possible way of satisfying regulatory requirements. However, it is possible that prescriptive requirements may be contained in guidance notes or in the industry standards or best practices to which they refer. The essence of goal oriented regulation is to use prescription when appropriate, to use goal setting when appropriate, and to use a combination thereof, when appropriate.

In each application, operators should be setting out their case as to how they propose to comply with any given regulation. Depending on circumstances, it may be that the best way to achieve this is to refer to an industry best practice or a standard that is actually quite prescriptive. Nonetheless, the option remains for an operator to deviate from this standard or best practice if an equivalent level of technical competence, protection, and safety is demonstrated.

#### 6. Roadmap of Plans to Effect Goal Oriented Regulations Required

The FORRI is currently discussing potential changes to the suite of offshore and north of 60 oil and gas related regulations. As these discussions proceed, CAPP will be kept informed.

#### 7. Transition Process

The PWG agrees with CAPP's comments and will be taking steps to ensure the transition to the goal oriented regulations will be smooth for both operators and regulators alike.

#### 8. Regulatory Approval Process

Depending on the final content of the DP Regs and the guidance notes, it is possible that additional time may be required to process certain applications, depending on the complexity and whether an entirely new approach or process is being proposed. Again, as the DP Regs project proceeds, the PWG will be discussing this issue and keeping CAPP informed. The PWG notes CAPP's comment on a notification requirement for identifying potential concerns early on in the process. This is a viable option.

## 9. Standards

The PWG expects that the guidance notes will make reference to Industry Recommended Practices, American Petroleum Institute, and other standards. The PWG anticipates that, depending on the topic and circumstances, conformance to such a standard would usually satisfy the regulatory requirement. This will be discussed further as the guidance notes are developed.

### **Next Steps**

A detailed response to all of CAPP's comments will be forthcoming. As discussed between Kent Lien and yourself, once this response is prepared, the next step would likely be a meeting between the PWG and CAPP to discuss CAPP's comments. This meeting would be a great opportunity to discuss the comments in detail and provide clarity around the structure and intent of goal oriented regulation. A November meeting date in Ottawa is a probable scenario.

The PWG looks forward to continued work with CAPP on this file. If you have any questions, or wish to discuss the project, please contact the Project Manager, Kent Lien, at (403) 299-2762 or by e-mail at [klien@neb-one.gc.ca](mailto:klien@neb-one.gc.ca). For communication in French, please contact Jodi Lea Jenkins, Assistant Project Manager, at (403) 299-3677 or by e-mail at [jjenkins@neb-one.gc.ca](mailto:jjenkins@neb-one.gc.ca).

Yours truly,



Michel L. Mantha  
Secretary

c.c: see attached Distribution List

c.c.

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