



Environmental Requirements to Obtain Offshore Drilling Licenses

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NORWAY

**ENVIRONMENTAL REQUIREMENTS TO OBTAIN OFFSHORE DRILLING
LICENSES***

Executive Summary

Norway's licensing system for petroleum activities is based on an application and approval system, not on a bidding system for contracts, and Norwegian authorities prefer to have multiple companies included on a lease, which takes the form of a joint venture.

The Ministry of Petroleum and Energy itself, before licensing areas for petroleum exploration and production, must conduct an impact assessment that assesses, inter alia, emergency preparedness and risk, and potential measures to reduce and compensate any important adverse effects, and describes measures available to prevent or compensate for any possible damage.

Under the Petroleum Activities Act, conditions for conducting licensed activities are to take environmental protection and protection of biological resources, among other considerations, into account. As part of the licensing application process, the application form must include a description of the applicant's experience in safety and the work environment, and applicants seeking operatorship for the first time in Norway must provide documentation of their operational experience in safety, working environment, and environment-related matters that they deem relevant in connection with the blocks applied for.

Moreover, several weeks before beginning exploration, the licensee must submit to the relevant authorities, as part of the conditions for the license, an evaluation of whether the exploration activities could harm particularly vulnerable environmental resources. Before an exploration permit will be granted, a licensee must submit a Plan for Development, to be approved by the MPE that makes reference to regulations for health, the environment, and safety in petroleum activities. The authorities play a role before the plan is finally approved, by following up with the licensee on such matters as barriers against major accidents for protection of personnel, the external environment, and material assets; the use of risk reduction principles; and emergency preparedness, including the ability to control and limit loss if accidents should occur.

* This report has been prepared on the basis of English-language sources available in the Law Library of Congress and on the Internet.

I. Overview

The granting of leases by the Kingdom of Norway for offshore oil drilling is governed chiefly by the Petroleum Activities Act¹ (PAA), the Regulations to the Petroleum Activities Act² (PAA Regulations), and the Regulations Relating to Resource Management in the Petroleum Activities (RM Regulations).³ In addition, relevant provisions of the country's standard joint venture agreement will apply. The Act applies to, among other matters, petroleum activities in connection with subsea petroleum deposits under Norwegian jurisdiction as well as to petroleum activities inside and outside the realm and the Norwegian continental shelf, insofar as application of the Act follows from international law or agreements with foreign states.⁴ The Act does not apply to the Svalbard Islands, including its internal waters and territorial sea.⁵

There are some key differences between the U.S. petroleum activities' licensing system and that of Norway. One significant difference is that Norway, unlike the United States, does not award leases on the basis of an auction system. Another is that very seldom is there only one company on a lease. The Norwegian Petroleum Directorate finds a multi-company lease desirable because "we want the different companies to challenge each other and create a system of internal checks and balances in the lease (which is a joint venture)."⁶ Under the Norwegian licensing procedure, companies must submit an application, which is evaluated by the Norwegian Petroleum Directorate in terms of the companies' geological and technical expertise (including safety) and the Directorate's previous experience with the companies.

The following sections of this report will elaborate on the Norwegian petroleum exploration and production licensing process and on features that might reflect, if not precertification of applicants based on their ability to prevent or respond to oil spills, certain requirements in the application or pre-production process that address environmental impact concerns.

¹ Act of Nov. 29, 1996, No. 72, Relating to Petroleum Activities [PAA], last amended by Act of June 19, 2009, No. 104, Norwegian Petroleum Directorate website, <http://www.npd.no/en/Regulations/Acts/Petroleum-activities-act/> (last visited June 10, 2010); Lov om petroleumsvirksomhet, LOVDATA, <http://www.lovdatabase.no/all/tl-19961129-072-001.html> (last visited June 10, 2010).

² Regulations Relating to Conduct of Activities in the Petroleum Activities [sic] [PAA Regulations] (in English) (in force from Jan. 1, 2002, as last amended by Royal Decree of Dec. 22, 2006, No. 1536), Norway Petroleum Safety Authority website, <http://www.ptil.no/activities/category399.html> (last visited July 29, 2010).

³ Regulations Relating to Resource Management in the Petroleum Activities [RM Regulations] (in English) (June 18, 2001), Norway Petroleum Safety Authority website, http://www.npd.no/Global/Engelsk/5%20-%20Rules%20and%20regulations/NPD%20regulations/Ressursforskriften_e.pdf.

⁴ PAA § 1-4, ¶ 1.

⁵ *Id.* ¶ 4.

⁶ E-mail from Myhra Espen, Energy Counselor, Royal Norwegian Embassy, to Wendy Zeldin, Law Library of Congress (June 14, 2010) (on file with author).

II. The Licensing Process for Petroleum Exploration and Production

The PAA stipulates in general that only the state may conduct petroleum activities without the licenses, approvals, and consents required pursuant to the PAA, unless otherwise stipulated.⁷ The general applicability of other Norwegian laws to petroleum activities, including provisions related to licensing, approval, and consent, is also provided for under the PAA, unless otherwise warranted.⁸ A licensee is defined as a

physical person or body corporate, or several such persons or bodies corporate, holding a licence according to this Act or previous legislation to carry out exploration, production, transportation or utilisation activities. If a licence has been granted to several such persons jointly, the term licensee may comprise the licences collectively as well as the individual licensee.⁹

Exploration licenses are covered under chapter 2 of the PAA and production licenses under chapter 3.

A. Opening of New Areas for Petroleum Activities by Norwegian Authorities

The PAA stipulates, in regard to the opening of new areas for which production licenses will be granted, that an evaluation is to be undertaken by the authorities beforehand of the various interests involved there, including an assessment of the impact of the petroleum activities on trade, industry, and the environment; of possible risks of pollution; and of potential economic and social effects.¹⁰ Opening of a new area is also a matter that is to be put before presumed interested parties, such as the local public authorities, central trade and industry associations, and other organizations. In addition, which areas are planned to become open, as well as the nature and extent of the petroleum activities therein, will be made known through a public announcement, with interested parties allowed at least three months' time to present their views. The Ministry of Petroleum and Energy (MPE) will decide on the administrative procedure to be followed in each individual case.¹¹

The PAA Regulations stipulate in detail the nature of the impact assessments relating to the opening of new areas for petroleum activities. The impact assessment must be based on an approved impact assessment program describing the aspects to be covered (including the assessments needed to establish an appropriate decision base), adapted to the opening of the area in question, and also insofar as possible be based on existing knowledge and necessary updating of that knowledge. Among other features, the impact assessment is to include:

- c) A description of assumed impacts on employment and commercial activities, as well as expected economic and social effects of the petroleum activities;

⁷ PAA § 1-3, ¶ 1, in part.

⁸ *Id.* § 1-5, ¶ 1.

⁹ *Id.* § 1-6j.

¹⁰ *Id.* § 3-1, ¶ 1.

¹¹ *Id.* § 3-1, ¶¶ 2-4.

- d) A description of important environmental issues and natural resources, including an overview of the mapping that has been carried out;
- e) A description of the impact of opening the area for petroleum activities in relation to, i.a.: living conditions for animals and plants, the sea bed, water, air, climate, landscape, emergency preparedness and risk, and the joint impact of these; ...
- i) An assessment of the need for, and any proposals in relation to investigations and measures to monitor and show the actual impacts of the opening and the potential measures to reduce and compensate any adverse effects of importance;
- j) A description of measures available to prevent or compensate for any possible damage and disadvantage.¹²

The MPE is to submit the impact assessment for consultation to the authorities concerned and to central industrial organizations, and also make the impact assessment available on the Internet. At the same time, an announcement of the consultation is to be made in the *Norwegian Gazette*. A “reasonable time limit” (typically three months) is to be set for submitting comments on the assessment, with all relevant background documents and scientific reports to be made available at the MPE’s offices and, to the extent possible, on the Internet. On the basis of comments received, the MPE will decide whether there is a need for additional assessments or documentation.¹³

Pursuant to the evaluation made in accordance with the PAA, the proposal to open a new area for petroleum activities will be submitted to the Storting (the Norwegian Parliament). The proposal will comprise the impact assessment, the comments received during the consultation process, and an evaluation of the importance given to these comments. The proposal will also “consider whether the opening should be made subject to requirements for further investigations to monitor and show the factual impacts of the petroleum activities ... and whether conditions to reduce and compensate for significant adverse effects should be set.”¹⁴

B. Exploration Licenses

According to the PAA, after the opening of an area for petroleum activities, the MPE may grant to a body corporate, or to a physical person domiciled in an EEA state, a license to explore for petroleum within limited areas of the seabed or its subsoil.¹⁵ The exploration license, typically granted for a period of three years, gives the right to explore for petroleum, but not the exclusive right to exploration in the areas mentioned in the license or any preferential right when production licenses are granted.¹⁶

No later than five weeks prior to the commencement of exploration activities, the licensee is to submit to the Norwegian Petroleum Directorate, the Directorate of Fisheries, the Institute of

¹² PAA Regulations § 6-c, ¶ 1.

¹³ *Id.* § 6-c, ¶¶ 3 & 4.

¹⁴ *Id.* § 6-d.

¹⁵ PAA § 2-1, ¶ 1.

¹⁶ *Id.* § 2-1, ¶¶ 2 & 3.

Marine Research, and the Ministry of Defence, among other numerous types of information listed (elaborating on section 6 of the PAA Regulations), an evaluation of whether the exploration activities could harm particularly vulnerable environmental resources.¹⁷ Comments on the RM Regulations note:

This information has until now been required as conditions stipulated in the individual exploration licence, and has furthermore been included as part of a form prepared by the Norwegian Petroleum Directorate to be completed in connection with submission of information prior to and during exploration activities. This provision therefore does not constitute any change in relation to information to be submitted.¹⁸

The RM Regulations stipulate that the MPE's Norwegian Petroleum Directorate grants the permits for exploration drilling. As part of the permit process, prior to commencement of drilling, an overall plan for drilling and well activities must be prepared and submitted to the authorities, together with the Plan for Development and Operation (PDO) or with an application for exemption from the requirement regarding such a plan. The permit will be granted on the basis of an application for registration of wells and well paths and a drilling program, provided that other requisite permits and consents have been granted. The drilling program is to provide relevant information about geological and reservoir technical matters.¹⁹ In addition, "[r]eference is ... made to what is required in the regulations for health, environment and safety in the petroleum activities, with regard to availability and deadlines for the drilling programme."²⁰ Comments on the RM Regulations state that consent is required for exploration activity that entails drilling to a depth exceeding 200 meters, "cf. the regulations for health, environment and safety in the petroleum activities."²¹

The PDO, which must be approved by the MPE, "describes the development of a petroleum deposit with the aim of production (development section), and the consequences the described development activities will have (impact assessment section). A PDO is prepared by the licensees in the production licence(s) where the deposit is located."²²

Guidelines on PDOs note that how the authorities follow up in the course of the decision process, up to approval of the PDO, "is largely adapted to the industry's normal project

¹⁷ RM Regulations, § 4, ¶ 1, item 1, in part.

¹⁸ "Re. Section 4 Particular Information in Connection with Exploration Activities," Comments to Regulations Relating to Resource Management in the Petroleum Activities, Norwegian Petroleum Directorate website, http://www.npd.no/Global/Engelsk/5%20-%20Rules%20and%20regulations/NPD%20regulations/Ressursforskriften_merknader_e.pdf (last visited July 29, 2010).

¹⁹ RM Regulations § 8, ¶¶ 1&2.

²⁰ *Id.* § 8, ¶ 3.

²¹ "Comments Chapter 2, Re. Exploration Activity," Comments to Regulations Relating to Resource Management in the Petroleum Activities, *supra* note 18.

²² Item 1.2, ¶ 1, Guidelines for Plan for Development and Operation of A Petroleum Deposit (PDO) and Plan for Installation and Operation of Facilities for Transport and Utilisation of Petroleum (PIO) (Feb. 4 2010), Norwegian Petroleum Directorate website, http://www.npd.no/Global/Engelsk/5%20-%20Rules%20and%20regulations/Guidelines/PDO-PIO-guidelines_2010.pdf.

progression,” and their “early insight into the project can contribute to early clarification of issues, and facilitate a shorter final consideration process for the final plan,” allowing licensees “to submit more mature plans without necessarily extending the total project implementation time.”²³ The authorities will target in particular in their follow-up during the planning phase such potentially safety-related aspects as external environment; “uncertainties”; barriers against major accidents for protection of personnel, the external environment, and material assets; use of risk reduction principles; working environment-related factors that can affect health and well-being; reliability factors that affect operational regularity/robustness/ease of maintenance; emergency preparedness, including the ability to control and limit loss if accidents should occur; and the use of new technology and work to qualify such technology.²⁴

C. Granting of Production Licenses

The King in Council may grant a production license based on conditions stipulated in the PAA. The license may be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises, insofar as other requirements are not applicable pursuant to international agreements, as well as to a physical person domiciled in a state of the European Economic Area (EEA). The license entails an exclusive right to exploration, exploration drilling, and production of petroleum deposits in areas the license covers, and the licensee becomes the owner of the petroleum produced. The King may stipulate as a condition for granting a production license that the licensees enter into agreements with each other that have specified contents.²⁵ Co-operation agreements made with a view to applying for a production license are to be submitted to the MPE, which may require that changes be made to them.²⁶

Under the PAA Regulations, conditions and requirements for granting a production license for an area and for conducting petroleum activities there pursuant to the license, are to be based “solely on the need to ensure” that the activities “are carried out in a proper manner.” Conditions for conducting the activities pursuant to a license are to “be based on consideration for national security, public order, public health, transport safety, environment protection, protection of biological resources and national treasures of artistic, historic or archaeological value, the safety of the facilities and the employees, systematic resource management (eg production rate or the optimisation of the production activities) or the need to ensure fiscal revenues.”²⁷

According to Norway’s 20th *Licensing Round Guide to Production License Applications*, the part of the application on expertise and experience in technology (in safety, working environment and environmental matters) is to describe, among other areas of expertise, expertise in safety and the work environment. The Guide states that applicants seeking operatorship for

²³ *Id.* item 1.3.

²⁴ *Id.* item 1.3.2.

²⁵ PAA § 3-3.

²⁶ *Id.* § 3-3.

²⁷ PAA Regulations § 11.

the first time in Norway must submit “documentation of their operational experience regarding safety, working environment and environment-related matters that they deem to be relevant in connection with the blocks applied for should be submitted.” This documentation should include, moreover, aside from the applicant’s guiding principles and operational organization related to these matters,

[m]anagement systems employed to ensure optimum safety and working environment conditions, together with those employed to ensure the protection of the environment, for those activities in which the applicant wishes to participate as operator in Norway. These should include provisions for the ongoing improvement of these.²⁸

Before a production license is granted, the MPE will generally announce the area for which applications for a license may be submitted (in some instances, however, the King may grant production licenses without announcement). The announcement will be published as a notice in the *Norwegian Gazette (Norsk Lysingsblad)* and the *Official Journal of the European Communities*. The notification will stipulate a time limit of at least ninety days for the filing of applications and will contain any information the MPE decides to include.²⁹ Granting of the license “shall be done on the basis of factual and objective criteria, and the requirements and conditions stated in the notification,” but the King is not obliged to grant any license on the basis of applications received.³⁰ The King has the power to issue additional regulations on the content of the production license application and the payment of application fees.³¹

D. Proof of Insurance Requirement

Proof of insurance is required for offshore drilling, and might be viewed as a requirement reflecting in part the licensee’s ability to prevent or respond to oil spills. There is no set amount for the insurance, but the Regulations to the PAA stipulate that “the license shall provide reasonable insurance cover.”³² Article 73 states in full:

The activities conducted by the licensee pursuant to the Act Chapters 3 and 4 [on production licenses and production of petroleum, respectively] shall be insured at all times. The insurance must at least cover:

- a) damage to facilities,
- b) pollution damage and other liability towards third parties,
- c) wreck removal and cleanup as a result of accidents,
- d) insurance of the licensee’s own employees who are engaged in the activities.

²⁸ 20th Licensing Round: Guide to Production License Application, Norwegian Petroleum Directorate website, [http://www.npd.no/global/engelsk/2%20-%20topics/\[licence%20awards\]/guide%20to%20production%20license%20application.pdf](http://www.npd.no/global/engelsk/2%20-%20topics/[licence%20awards]/guide%20to%20production%20license%20application.pdf) (last visited July 29, 2010).

²⁹ PAA § 3-5, ¶¶ 1 & 2.

³⁰ *Id.* § 3-5, ¶¶ 3 & 4.

³¹ *Id.* § 3-5, ¶ 5.

³² *Id.* art. 73, ¶ 3.

The licensee shall ensure that contractors and subcontractors engaged in the activities take out insurance for their employees to the same extent as the operator insures his own employees.

When taking out insurance as mentioned in the first paragraph literas a) to c), the licensee shall provide reasonable insurance cover, taking into consideration risk exposure and premium costs. Insurance as mentioned under litera d) shall be taken out as further agreed with the organisations of the employees.

The Ministry may consent to the licensee using another form of security arrangement.

At the end of each calendar year, the licensee shall inform the Ministry about existing insurance agreements, with an indication of the main terms. The Ministry may require further insurance to be taken out.³³

The text from the standard joint venture agreement that relates to insurance, found in Article 14, is as follows:

141 The Operator shall, on behalf of the joint venture, take out and maintain such insurances as required by laws and regulations and other resolutions by the authorities, and other insurances as decided by the management committee. Copies of such policies shall be submitted to the Parties.

The Operator shall duly file all claims covered by such insurances and collect indemnities which are to be credited to the joint account. A Party may also make investigations in connection with an insurance claim.

142 A Party is entitled to take out his own insurance or in other equivalent ways ensure coverage. In such case he shall notify the Operator well in advance before the Operator takes out insurance on behalf of the joint venture, and give the Operator and the other Parties the necessary information on his insurance coverage, and ensure that recourse against the other Parties has been waived.

The Operator shall in such cases give the Party requiring it, the information necessary to establish the insurances and duly assist a Party promoting claims under such insurances. Extra cost arising in this respect shall be covered by the Party concerned.

143 The Operator shall establish that the insurer of those Parties which are covered by a joint insurance or other equivalent coverage taken out by the Operator, has waived recourse claims against a Party which has taken out its own insurance.

144 The Operator shall ensure that suppliers of goods and services to the joint venture activities take out and maintain such insurances as are required by laws and regulations and other requirements by the authorities, or which are decided by the management committee. The Operator shall endeavour to secure waivers of recourse actions against the Parties.³⁴

³³ *Id.* art. 73.

³⁴ Text provided courtesy of Royal Norwegian Embassy.

III. Svalbard

The Regulations Relating to Safe Practice in Exploration and Exploration Drilling for Petroleum Deposits on Svalbard require licensees to submit, via the Governor of Svalbard, to the Petroleum Safety Authority Norway, “as soon as possible and no later than six months before the planned commencement of drilling and well activities,” documentation on the drilling project that includes, among other plans, a contingency plan.³⁵ These Regulations further stipulate:

The licensee shall at all times maintain an efficient state of preparedness with a view to being able to meet major accidents and emergency situations which may involve loss of human life or personal injury, pollution or serious damage to property. The licensee is responsible for ensuring that the necessary measures are taken to prevent or minimize any harmful effects, including what is necessary in order to as far as possible bring the environment and the equipment back to the condition existing prior to the accident.

The Petroleum Safety Authority Norway and the Governor may lay down rules concerning such contingency and measures, and also order common contingency efforts for several licensees.³⁶

The contingency plan is to be based “on the best methods and the best equipment existing at any time. In addition to the emergency equipment located at the drillsite, adequate equipment shall at all times be available from bases in the area,” and the equipment is to be inspected regularly and kept in good condition. The contingency plan must be kept continuously up to date and be made known to all involved personnel.³⁷ It is to contain “at least” the following plans:

1. An organization plan clearly stating the structure of responsibility and line of command as well as the individual person’s area of responsibility in the event of major accidents and emergency situations;
2. A plan for and a summary of equipment to combat the particular accident or emergency situation, clearly stating e.g. the make and type of the equipment, its capacity, location, type of transport, field of operation and correct operation;
3. An action plan clearly describing alarm and communication systems, including a system for notifying the authorities, each person’s duties, when and how the emergency equipment is to be employed and action carried out, measures for limiting the harmful effects of the accident or emergency situation in question and rules for terminating the action.³⁸

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³⁵ Regulations Relating to Safe Practice in Exploration and Exploration Drilling for Petroleum Deposits on Svalbard (stipulated by Royal Decree of Mar. 25, 1988) (as last amended Dec. 19, 2003, No. 1596), § 23, Petroleum Safety Authority Norway website, http://www.ptil.no/getfile.php/Regelverket/Svalbardforskriften_e.pdf (last visited July 29, 2010).

³⁶ *Id.* § 66.

³⁷ *Id.* § 67, ¶¶ 2 & 3.

³⁸ *Id.* § 67, ¶ 5.

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UNITED KINGDOM

**ENVIRONMENTAL REQUIREMENTS TO OBTAIN OFFSHORE DRILLING
LICENSES**

Executive Summary

There are a number of requirements that applicants that wish to obtain petroleum in the United Kingdom's Continental Shelf must meet before a license to conduct this activity is granted. These include an environmental review to ensure that the applicant will have liability coverage for pollution, is aware of environmental regulations and organizations, has complied with environmental legislation in the past, and is aware of the environmental sensitivities and issues in not only the area it wishes to explore or exploit but also adjacent areas. The level of information provided to meet these requirements varies according to whether the applicant is new or an established operator in the UK.

I. Introduction

The rights to the United Kingdom's petroleum¹ resources are vested in the Crown.² These rights may be granted to others by license from the Secretary of State acting on behalf of the Queen.³ The license provides the licensee the right to "search and bore for and get" petroleum⁴ for a specified area and limited period of time.⁵ The Secretary of State has discretion when granting licenses and exercises that discretion to "ensure maximum exploitation of this valuable national resource," but also takes a number of other factors into account, including that the licensee "protect[] ... the environment and the interests of other users of the sea."⁶ All new operators wishing to obtain a license to engage in offshore activities in the UK must "demonstrate to the Department of Energy and Climate Change (DECC) [the body responsible for issuing licenses on behalf of the Secretary of State] that they would be acceptable as a UKCS

¹ Petroleum is defined as "any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata; but does not include coal or bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation." Petroleum Act 1998, c. 17, § 1.

² Petroleum Act 1998, c. 17.

³ *Id.*

⁴ Petroleum Act 1998, c. 17, § 3.

⁵ Department for Energy and Climate Change, *Licensing: Overview*, <https://www.og.decc.gov.uk/upstream/licensing/overview.htm> (last visited July 29, 2010).

⁶ *Id.*

Production Operator.”⁷ The applicant must satisfy the DECC of a number of items, such as its financial ability, and must meet a number of environmental requirements.⁸

II. Environmental Requirements To Be Shown During Bidding

There are a number of requirements pertaining to the environment that must be fulfilled by “all companies entering the UKCS as a potential new operator, either as a license applicant or following the purchase or reassignment of an existing asset.”⁹ These are commonly known as “appendix C” submissions and there are four different areas that the applicant must provide information on,¹⁰ including pollution liability, environmental regulation and organization, legislative compliance, and environmental sensitivities and issues.¹¹

A. Pollution Liability

The applicant must show details of its proposed pollution liability arrangements. Such details may include evidence of registration with the Offshore Pollution Liability Association (OPOL), which guarantees liability payments in cases of pollution up to US\$120 million per incident.¹² New applicants may also include submissions that demonstrate an understanding of the requirements and measures they will take to meet them prior to undertaking any offshore activities.¹³

B. Environmental Regulation and Organization

Applicants need to show evidence that they are aware of relevant environmental regulations,¹⁴ European Union Directives, and other international agreements that relate to offshore activities in the UK and that show they are committed to the UK’s offshore environmental policy and management.¹⁵ The evidence required to demonstrate these items is fairly extensive and includes the following:

⁷ Department for Energy and Climate Change, *Guidance for Change of Operator*, at 1, https://www.og.decc.gov.uk/environment/operator_change.doc (last visited July 29, 2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ Department of Energy and Climate Change, *Guidance Note: Applications for Production Licences – Appendix C*, at 1, https://www.og.decc.gov.uk/upstream/licensing/26_rnd/guidance_environment.doc (last visited July 29, 2010).

¹¹ *Id.* ¶¶ 10-20. For a flowchart of the environmental approval process, *see id.* at 5.

¹² The Offshore Pollution Liability Association, *Home*, <http://www.opol.org.uk/> (last visited July 29, 2010).

¹³ *Id.* ¶¶ 10-11.

¹⁴ *See, e.g.*, The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1745. Guidance on the implementation of this regulation is available online, at <https://www.og.decc.gov.uk/environment/habitatguidnote.doc> (last visited July 29, 2010).

¹⁵ Department of Energy and Climate Change, *supra* note 9, ¶ 13.

13.1) Established operators should provide confirmation that their existing Environmental Management System (EMS) has been verified and notified to DECC as meeting the requirements of DECC Guidance Commitment should also be given that any offshore activities on proposed new acquired areas will be integrated into and carried out in accordance with, the company EMS and DECC Guidance.

13.2) New applicants must provide a brief high level submission to demonstrate they understand the requirements and that they have the commitment, systems and procedures to identify, monitor and control the environmental aspects associated with their exploration and production activity, or provide a timetable to meet these requirements prior to undertaking any offshore activities on the UKCS.

The information to be provided consists of:

- **Environmental Responsibilities** – A description of the Company’s management structure (directors / managers / personnel), identifying specific responsibilities for environmental issues up to and including board level (an organisation chart will be the best way to summarise the responsibilities).
- **Environmental Policy** – A copy of the Company’s environmental policy statements
- **Environmental Management** – In accordance with current DECC Guidance on EMS ... the applicant should, either
 - A) provide confirmation that their existing EMS has been independently verified as meeting the requirements of DECC Guidance on EMS ... or,
 - B) provide a commitment that such an EMS will be developed, implemented, independently verified and notified to DECC in accordance with guidance before offshore operations commence.¹⁶

C. Legislative Compliance

The legislative compliance section only applies to new applicants, who must provide information detailing that they have complied with legislation. Specifically, they must provide information on whether the applicant company has, in any country during the past five years:

- failed to comply with environmental legislative standards or requirements to the satisfaction of the environmental regulator;
- been subject to any criminal or civil action against it relating to environmental issues, or whether any such action is pending; or
- been convicted of breaching any environmental legislation.¹⁷

D. Environmental Sensitivities and Issues

Both new and established applicants must provide a summary environmental assessment of their proposed work program, showing that they are aware of the sensitivities in the area and

¹⁶ *Id.* ¶¶ 13.1, 13.2.

¹⁷ *Id.* ¶¶ 14-15.

adjacent to their blocks of interest. As well as acknowledging the sensitivities and issues that may arise, an applicant must also demonstrate that it is aware of the potential impact its work would have and the steps it will take to manage this impact.¹⁸ The assessment must take into account recommendations from the Strategic Environmental Assessments that the DECC has published as well as other relevant reports.¹⁹

III. Distinction in the Environmental Submissions Required Between Established Operators and New Applicants

As seen from the information above, there are different requirements for established oil and gas companies that already have a license in the UK and new applicants. The DECC states that the reason for the different standard is that information relating to pollution liability, environmental regulation and organization, and legislative compliance will have already been submitted and reviewed during previous applications and that it will also have access to its record of compliance. The DECC does require established operators to provide new submissions if there have been significant changes in any of these categories.²⁰ If the DECC observes any outstanding issues during a review of the previous submissions or information it holds on the existing operator, it may require applicants to attend an interview with the Offshore Environment and Decommissioning Branch of DECC's Energy Development Unit.²¹

New applicants must provide more detailed information covering all four areas shown above. The DECC acknowledges that new applicants for licenses may not be able to provide submissions that satisfy the environmental requirements. In these instances the DECC notes that:

fully meeting the environmental requirements may be unnecessary at the licence application stage, and that development of firm proposals may be dependent upon licence award. Applicants will therefore be expected to provide brief submissions to demonstrate that they understand the environmental requirements, including an outline timetable, or timetables, for meeting the specified requirements prior to undertaking any offshore activities on the UKCS. The timetable(s) should be clearly linked to the work programme submitted in support of the application, and it is important to realise that environmental consents will not be issued until new licensees have satisfied all the environmental requirements.²²

If, during the review of the appendix C submissions, the DECC is not satisfied with the information provided it may require a meeting with the applicant to discuss the submissions and attempt to agree upon the environmental commitments of the applicant. If the meeting does not result in a satisfactory agreement, the license will not be granted.²³

¹⁸ *Id.* ¶ 16.

¹⁹ *Id.* ¶ 16.

²⁰ *Id.* at 1.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 5.

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