

DRAFT EXTERNAL



Minerals Operational Guidelines

Crown Minerals Act 1991

Minerals Programme for Minerals 2013

Crown Minerals (Minerals Other than Petroleum) Regulations 2007

Guidance on work programme compliance

Introduction

In return for rights to Crown resources, permit holders must meet a range of obligations: payment of fees and royalties, Annual Summary reporting under regulation, adherence to good industry practice, and carrying out an agreed work programme.

Work programme compliance for prospecting, exploration and mining permits is fundamental to the interaction between permit holders as commercial operators and NZP&M as resource owners on behalf of the Crown.

Managing work programme compliance and processing changes to work programmes to avoid non-compliance are a large part of the permit management work load for NZP&M.

Purpose

This guideline explains how NZP&M administers work programme compliance against the requirements of the legislation.

This guideline should be read in conjunction with the companion guidelines on work programme design and technical reporting.

Legislative context

Section 23 of the Crown Minerals Act 1991 ("The Act") outlines the purpose of each type of permit. Chapters 8, 9 and 10 of the Minerals Programme for Minerals (Excluding Petroleum) 2013 (the "Minerals Programme") detail the expectations of permit work programmes.

Section 33 of the Act requires a permit holder to comply with the conditions of the permit and perform activities under the permit in accordance with good industry practice. Section 43 requires that a work programme be approved before a subsequent permit can be granted. The work programme becomes a set of conditions that are part of the permit document.

Chapter 11 of the Minerals Programme covers many of the general obligations of permits holders throughout the life of a permit, including complying with permit conditions and work programme

DRAFT
EXTERNAL

obligations, Annual Summary Reporting, technical reporting, resource and reserves reporting and attending Annual Review Meetings.

Applicable guidelines

General

Compliance with work programmes

Work programmes are proposed by permit holders as part of their application. There may be some negotiation before they are agreed between NZP&M and the permit holder prior to granting the permit. No obligations is arbitrarily imposed.

Work programme compliance is primarily guided by outcomes and is not intended to be pedantic. However, work programmes are minimum activities and NZP&M expects that those agreed and set out in the permit conditions are carried out. This should be carefully considered when minimum work programmes are proposed.

Good industry practice

Work programme compliance, including on general work programme obligations such as completion of mining feasibility studies, will be judged against good industry practice. As well as compliance against the conditions, this has a bearing on whether a resource knowledge standard has been reached that will support an application for a subsequent permit. Again, it is in a permit holder's interest to consider this in work programme proposals¹.

Recording of non-compliance

If work programme activities are not completed, and if no change of conditions is granted, the permit holder will be non-compliant for that activity. Serious levels of non-compliance, or continual non-compliance on a permit or permits, may result in NZP&M proceeding with revocation action against the permit².

NZP&M's permit management system records the compliance record of a permit and the compliance history of permit holder across their portfolio of current and past permits. Compliance for each obligation will be recorded against timeliness and quality.

Permit holders should inform NZP&M by the due date of an obligation that an activity has been completed, otherwise the obligation will be recorded as overdue and a chase process initiated. Prolonged delay will result in the activity becoming non-compliant. Submission of reports on time, which can be up to 40 working days later than the activity is due to be completed, does not mean that the activity itself is compliant.

Compliance on reporting

All reports created in relation to work programme activities must be submitted to NZP&M, either under regulation 33 or by specific permit work programme conditions³. Under regulation 34, all

¹ see the guideline on Work Programme design.

² explained in clause 12.14(11-15) of the Minerals Programme

³ see guideline on technical reporting.

Commented [PM1]: Minerals West Coast would encourage NZPAM to use a degree of practicality when assessing compliance with these work programmes, especially when considering the complex nature of resource consenting and land access agreements.

Alluvial gold miners are also reliant on Ngai Tahu Forests to provide access to their forestry estate and production schedules can change on a regular basis, making projections on entry difficult.

The costs associated with a change of permit conditions are also prohibitive with this amounting to almost the same as a permit application.

MWC would also encourage NZPAM to become more flexible in relation to the timeframes for change applications to be made as the 90 day timeframe does not provide for the short term changes described above.

Commented [PM2]: There needs to be a criteria for assessing non compliance. A system where minor or technical non compliance is recorded will still provide incentive to ensure permit conditions are complied with but does not risk permit revocation which can be seen as an extreme act and outweighs the offence.

DRAFT
EXTERNAL

reports must be complete, and reports must meet reasonable standards of good industry practice⁴. NZP&M interprets these requirements to mean that reporting should not only provide data but also include results and interpretation.

Reports and data are usually due 40 working days after the end of each stage of the work programme or, under regulation 33, the end of the permit year.⁵

Data submission standards

Compliance will also be carried out on the data related to that activity that is required under work programme conditions and the regulations. Data should be submitted according to the Mineral and Coal Digital Data Submission Standards 2011, available on the NZPM website www.nzpam.govt.nz.

NZP&M discretion

NZP&M has some discretion over the level of non-compliance, which is recorded in NZP&M's permit management system. For example lateness of work programme activities being carried out, or lateness of reporting on them, is at a lower level of non-compliance than failure to complete the activity or provide a report to NZP&M. Non-compliance is cumulative and may result in decline of applications for new permits or revocation of an existing permit.

Work programme obligations are based on individual permits. Where several permits cover the same resource, their boundaries may be an arbitrary fit to a resource and its development potential. The legislation does not directly allow work programme trade-offs between permits, which can result in compliance difficulties when company priorities change. There are opportunities for work programme rationalisation through changes of conditions, extensions of land and permit amalgamations.

There is some discretion possible on non-compliance trade-offs between different obligations for a single permit providing the outcome of the overall work programme is not compromised. There is also some discretion if the outcome of a work programme stage is met without all activities on the work programme being fully completed. Work not done cannot be complied and will become part of the compliance record, but may be treated as low-level non-compliance with respect to consideration of future applications or the permit holder's overall compliance record.

There is no discretion to use funding constraints as an excuse for non-compliance.

Change of conditions to avoid non-compliance

Changes of conditions can be applied for to avoid non-compliance. Just because a change of conditions is applied for does not mean it will be granted as NZP&M has to consider the reasons for changing the work programme against the legislation. The considerations for a change of conditions are set out in clause 12.1 and 12.2 of the Minerals Programme. Applications for changes of conditions must be received 90 days prior to the specified date of an obligation unless compelling reasons exist.

A change in the work programme conditions should not compromise the overall outcome of the permit's objective or make the work programme materially weaker.

⁴ See guideline on good industry practice.

⁵ See guideline on technical reporting for further explanation of regulation 33.

Commented [PM3]: This should be countered against the history of the permit holder and ability to comply with other permits and what has occurred in the past. The level of investment, employment and royalties paid should also be taken into account.

Commented [PM4]: Greater flexibility should be applied here to deal with consenting and access constraints.

DRAFT
EXTERNAL

Prospecting and exploration permits

Staged work programmes

Work programmes for prospecting and exploration permits have staged obligations that are measurable and time bound. The stages have defined outcomes with activities that will enable the permit holder to meet the outcome of the stage and ultimately the objective of the permit.

Exploration permits generally contain a three-year and a two-year stage, in no particular order, intended to reduce compliance transactions. This differs from the previous detailed, year-by-year work programme obligations. Permit holders are required to complete the prescribed minimum work programme obligations at the end of each stage. Annual Review Meetings are intended to monitor progress on work programme obligations and deal with compliance issues early before the obligations become due at the end of the work programme stage.

Work programme compliance

In general, NZP&M does not require detailed, prescriptive work programmes. The simpler work programmes are the less compliance problems there are. Each stage of a work programme should have an outcome that is based around activities to support that outcome.

Whether only 1000 m of drilling was done to meet a work programme obligation to drill 1200 m is less important than whether the objective of the drilling was met. However, the work programme obligation is a minimum one, and should be designed as that in the first place.

There are three parts to prospecting and exploration work programme compliance. All three have to be met for a work programme condition to be complied.

- undertaking the agreed activities by the due date
- reporting on the work undertaken (usually in technical reports for exploration and prospecting permits) by the due date
- providing data in accordance with the data submission standards.

When complying work programme activities, NZP&M will consider whether:

- individual work programme obligations have been completed
- the work completed meets the intended outcome of the minimum work programme
- the work has been carried out to a reasonable standard and in accordance with good industry practice
- whether the work has been completed within the timeframe specified in the work programme.

Good industry practice for prospecting and exploration permit obligations

A permit holder is required to complete the activities specified in the work programme in accordance with good industry practice under section 33 of the Act. Prospecting, exploration and appraisal activities should be conducted to ensure that good quality, objective data is acquired, within reasonable technical and economic constraints. Sufficient data should be obtained to sufficiently understand a mineral deposit when undertaking a resource estimate and to undertake scoping studies, pre-feasibility or feasibility studies.

DRAFT
EXTERNAL

Mining Permits

Mining permit work programmes

Work programmes for mining permits centre on production rather than staged activities. The work programme is primarily mining itself, and the key consideration is assurance that this will economically deplete the mineable resource to the maximum extent practicable.

Compliance with work programme

NZP&M's main insights into activities into mining permits are through Annual Summary Reports⁶, Annual Review Meetings (for Tier 1 permits) and site visits. Information acquired by NZP&M through these means will be assessed against a mining permit's work programme and general conditions. NZP&M will consider whether a permit holder is complying with their work programme and whether the mining operation is being carried out in accordance with good industry practice.

Start dates for mining

In general, mining operations will be expected to start as soon as possible on the permit unless otherwise specified in the permit's work programme conditions. Most mining permit work programmes have a specified date in which mining must commence by on a permit. A commencement of mining obligation is an obligation on permits to ensure the permit holder is giving effect to the permit by mining the permit. The obligation is also on permits ensure a permit holder is not "holding ground" by holding the permit and not giving effect to it.

Permit holders should notify NZP&M when mining has commenced by the due date, otherwise NZP&M will assume that mining has not commenced and the permit holder will become non-compliant. If a permit holder has legitimate grounds for mining not commencing within the specified timeframe on the permit,⁷ a change of conditions should be applied for. Alternatively the permit holder should apply to amend the commencement date of the permit under section 35(9) if applicable.

Not commencing mining on a mining permit is considered a high level of non-compliance and extended delay of start-up can lead to permit revocation.

Minimum production

Most mining permits will have an annual minimum production obligation. This is to prevent land banking and to ensure that there is a return to the Crown from the right to mine its resources. If resource depletion or other technical issues arise that constrain production, a change of conditions should be applied for with a proposed new work programme that has the objective of bringing the permit back into production in a timely manner. The Act does not accommodate economic constraints.

If there is no intention to mine, the permit should be surrendered under section 40 of the Act. Continuous non-production may result in revocation of a mining permit.

Exploration in mining permits

⁶ See guideline for preparing Annual Summary Reports.

⁷ See part 12.2 of the Minerals Programme.

Commented [PM5]: In relation to alluvial gold mining, the uncertain nature of the industry means that permit holders usually need to have multiple permits to rely on to ensure that they have certainty of ground. This should not be seen as 'holding ground'

Commented [PM6]: This needs to be made clear in the permit conditions. Currently there is no requirement to notify of commencement hence the receipt of 'Unmet Obligations' letter.

Commented [PM7]: This process is cost prohibitive currently and there should be an opportunity for a minor and technical change to made at minimal cost.

DRAFT
EXTERNAL

Permit holders are also required to provide reports to NZP&M of all prospecting and exploration completed in a mining permit. This includes any additional drilling to delineate the extent of the deposit and any additional feasibility studies. Although usually not specifically stated in a mining permit work programme, providing these reports and records is a requirement under regulation 33 for all permit holders. These reports and records are required 40 working days following the commencement of each permit year.

To cover doubt about what reports need to be supplied, all reports produced in relation to work programme activities in Tier 1 permits must be listed in the Annual Summary Report. If there are reports on that list that have not been submitted under work programme reporting or separately under regulation 33, and NZP&M considers that it is entitled to under section 90 of the Act, NZP&M will ask for them.

Good industry practice for mining permit work programmes

Compliance with mining permit work programmes will be measured against good industry practice. Annual summary reports (including submission of mine plans, production reporting, and resource and reserve reporting), Annual Review Meetings and site visits are important aspects of considering compliance with good industry practice. The technical approach an applicant originally proposed in a permit application is also considered.

Mining operations need to be conducted in a way to maximise economic recovery of the mineral being mined and minimise sterilisation and waste. Sterilisation can occur during a mining operation due to economic and/or technical constraints that may not be avoidable. High-grading or sterilisation of a mineral deposit that would otherwise be economic to mine is contrary to good industry practice and is likely to trigger compliance action.

Good industry practice includes management of operational risks, including health and safety risk. NZP&M work closely with WorkSafe NZ in this area of compliance.

Disclaimer

This document is a guideline only and is not intended to cover every possible situation. If this guideline is inconsistent with the Act, relevant Minerals Programme or relevant regulations, the Act, Programme and regulations prevail. This guideline has no binding legal effect and should not be used as a substitute for obtaining independent legal advice.

New Zealand Petroleum and Minerals (NZP&M) is not responsible for the results of any action taken on the basis of information in this guideline, or for any errors or omissions in this guideline. NZP&M may vary this guideline at any time without notice.

There may be factors taken into account in any application process, transaction or decision that are not covered by this or any other guideline. Adherence to this guideline does not guarantee a particular outcome. NZP&M retains the discretion to decline any application where the statutory requirements for that application are not met.