

Operational Policy

Exceptional Circumstances

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Purpose

This policy provides guidance to industry and sets out the principles to be followed by departmental officers when assessing circumstances over which a permit holder did not have control have occurred (exceptional circumstances).

If a permit holder or applicant can satisfy the department that there was an exceptional circumstance preventing them from meeting a requirement, the decision maker may waive compliance with a statutory requirement.

This policy is written to:

- provide guidance and clarity to both industry and departmental officers
- promote consistency of permit administration and regulation across resource legislation
- ensure that key objectives of the legislation are achieved to the maximum extent possible
- increase the department's timeliness and efficiency of processing permit applications and requests.

The information contained in this policy does not override legislative requirements, and reflects current practices within the department. These practices may change from time to time with all changes to be published through a revised version of this policy.

Policy Determination

Application

This policy relates to the following provisions of the resources legislation and any corresponding regulations:

- s.393 of the *Mineral Resources Act 1989*
- s.59 and s.62 *Petroleum and Gas (Production and Safety) Act 2004*
- s.66 and s.69 of the *Greenhouse Gas Storage Act 2009*.

The principles of this policy may also be applied to any departmental decisions or policy that may require the application of the exceptional circumstances principles outlined in this policy.

Background

Under the resources legislation there are provisions that enable a permit applicant or holder to satisfy a decision maker that they have not been able to fulfil a statutory obligation due to circumstances over which they had no control. The department refers to this as exceptional circumstances.

What is an exceptional circumstance?

An exceptional circumstance is when the permit holder's ability to fulfil a statutory requirement of the permit applicant or holder is adversely impacted by an event that:

- is or was beyond the permit holder or applicant's control, and
- could not have been prevented by a reasonable person in the permit holder or applicant's position.

These types of circumstances may typically be force majeure events (events that may be considered impossible to control or anticipate) such as strike, crime, cyclone or flooding. An exceptional circumstance may also be a circumstance where the holder has done everything that they are reasonably expected to, but are still prevented from meeting their statutory obligation by a third party.

What is not an exceptional circumstance?

Exceptional circumstances do not include common risks in the industry; these are any circumstances regarding the applicant or holder's financial or technical resources or ability to manage exploration and the results of exploration.

Examples of these may include, but are not limited to the following:

- failure to raise funding or obtain a financial agreement (such as a joint venture agreement) to undertake the work program;
- inappropriate time management of resources e.g. contractors or geoscientists are delayed by other projects;
- disappointing or poor exploration results; or
- transfer of the permit to another party.

Such factors may influence the perceived commercial viability of the work program, and the option may be then for the holder to relinquish all or part of the area.

How can I demonstrate exceptional circumstances?

The department may consider accepting an exceptional circumstance only where the holder can provide substantial and compelling evidence that demonstrates that:

- the exceptional circumstance occurred;
- the exceptional circumstances affected the permit holder or applicant's ability to meet the requirement, and
- that the circumstance could not be reasonably anticipated, managed or avoided by the permit applicant or holder.

The type of evidence required by the department will include tangible documentation (e.g. letters, emails, technical data, maps and plans) that clearly identifies that the holder intended to comply with the permit requirement and the exceptional circumstance that prevented the holder or applicant from complying.

For example, if a permit holder is required to demonstrate that there were exceptional circumstances for not meeting a work program requirement then the permit holder should provide the following information to the decision maker:

- certified copies of documentation (made before the exceptional circumstance) that demonstrate in sufficient detail that the holder intended to carry out the work program activity in the timeframe affected by the exceptional circumstance;
- documentation that demonstrates the exceptional circumstance and how it impacted on the ability to complete the work program activity in that timeframe, and
- documentation that demonstrates why the activity could not be completed during the remaining permit term e.g. after the exceptional circumstance had concluded or elsewhere in the permit in an area not affected by the exceptional circumstance.

If exceptional circumstances make it impossible to provide this evidence, for example a flood that has impacted a place of business, the holder or applicant should advise the decision maker of this.

The decision maker will work with the permit holder or applicant to find alternative ways to address this requirement. For example, a statutory declaration from the applicant or holder may be required.

Important note: The department will not look favourably on submissions from applicants or holders that fail to provide this information to the department. The failure could result in a negative outcome for the applicant or holder. For example the rejection of an application to amend an initial work program under s59 and 62 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Availability:	External *
Location	Business Industry Portal
Owner:	Georesources Division
Date of this Version	30 June 2019
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Approving Authority	Deputy Director General
Related documents	
Contact:	<p>For help and information contact an Assessment Hub:</p> <p>Phone: (07) 4936 0169 Email: CoalHub@dnrme.qld.gov.au</p> <p>Phone: (07) 4447 9230 Email: MineralHub@dnrme.qld.gov.au</p> <p>Phone: (07) 3199 8118 Email PetroleumHub@dnrme.qld.gov.au</p> <p>For technical support contact the MyMinesOnline Helpdesk. Telephone: +61 7 3199 8133 Email: mines_online@dnrme.qld.gov.au</p> <p>8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.</p>

Disclaimer

The purpose of this policy is to provide a framework for consistent application and interpretation of the legislation administered by the department. Policies may be applied flexibly where individual circumstances require an alternative application of policy. Where this policy, or part of this policy, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency. While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Queensland Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.