What is the Role of Government in Technical Regulation? ("Finding the Right Balance")

APIA TECHNICAL REGULATION SEMINAR

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Overview

• Introduction
• Why regulate?
• “We are all regulators”
  – Setting the rules
  – Performance monitoring
  – Corrective Action
• Conclusions
  – Factors affecting regulators
  – The role of the regulator
  – Challenges
Introduction

• 40 year history of pipelines
  – Changes in societal expectation
  – Changes in regulatory approach

• Everyone has a view
  – Views are shaped by our experience and history

• Coherent regulatory philosophy is required

• Technical regulation NOT economic regulation
Why regulate? (1)

- Balance common and conflicting objectives
- Recognise all stakeholders
- Regulation required where there is “market failure”
  - No direct economic incentive
  - Information asymmetry
- Environment, public safety, stakeholder rights
- Effective regulations need teeth
Why regulate? (2)

- Grant rights to undertake development
- Provide means to manage natural conflicts in stakeholder objectives
- Facilitate informed-decision making by all stakeholders
- Enforce remedial action when required
- Question becomes “What is the regulator’s role?”
“We are all regulators”

- **Project management analogy**
  
  Regulations = contract
  Regulator = project manager
  Contractor = licensee
  Minister = company board
  Community = shareholders
Common features

• Clear rules of engagement
  – Objectives
  – Technical standards
  – Roles and responsibilities

• Performance monitoring and review system

• Dispute resolution and corrective action

• Information flow and trust
Rules of engagement

• Contract = regulations / licence
• AS 2885
  – Clear technical standard
  – Accepted by all parties
  – Common objectives
• Environmental rules
  – Approvals process
  – Consultation
• Roles and responsibilities
Common objectives

- **SA Petroleum Act 2000 objectives**
  - Minimise risks to public and pipeline personnel
  - Minimise environmental damage
  - Maximise security of supply

- **AS 2885 Objectives (Part 0)**
  - “This standard exists to ensure the safety of the community, protection of the environment, and security of supply”
Roles and responsibilities

• Licensee
  – Achieve agreed objectives
  – Design, build and operate safe pipelines
  – **Demonstrate** safe pipelines to community, regulatory authorities

• Government
  – Act as agent of community
  – Make informed decisions on quality of information
  – Apply positive pressure by the “threat of scrutiny”
  – “Don’t tell licensee how to do the job, but find out that the job is being done”
How do I know?

• **What do I need to know?**
  – *Outcomes are the most important*
  – *Systems and procedures deliver outcomes*
  – *Objective NOT prescriptive*

• **How do I find this out?**
  – *Agreed reporting program*
  – *Inspections to check integrity of reports*

• **Demonstrate good practice**
  – *Board, financiers, shareholders*
  – *Regulator, government, community*
What happens when rules are broken?

- Objective is compliance NOT punishment
- Rectify immediate breach
- Fix the root causes
- Range of strategies required
  - Account for compliance history
  - Punitive measures are the last resort
- SA Petroleum Act 2000 Compliance Policy
SA Petroleum Act Compliance Policy

**Preventive tools**
- Monitoring compliance (field/desktop inspections)
- Public recognition of outstanding performance
- Security lodgment
- Education and support

**Persuasive tools**
- Notice of non-compliance
- ‘Show cause’ warning
- Formal warning

**Compulsive tools**
- Activity direction/prohibition
- Prosecution or administrative penalty
- Security forfeiture

**Punitive tools**
- License cancellation
Finding the right balance

• Regulator style is dictated by:
  – Legislation (primary and secondary)
  – Regulatory philosophy
  – Perceptions of market failure
  – Whether roles & responsibilities are clear
  – Perception of risk associated with industry
  – Political environment (government, media, public)
  – Confidence in licensee and industry
  – Technical competence of regulator
  – Resources
The role of the regulator

- Agent of the community
- Find the right balance:
  - Focus on outcomes
  - Address market failure issues
  - Develop and implement effective compliance monitoring strategies
  - Apply positive pressure by the “threat of scrutiny”
  - Enforce effective compliance strategies
  - Continually ask “Why regulate?"
- “Don’t tell licensee how to do the job, but find out that the job is being done”
Challenges to industry and government

- Develop a regulatory philosophy
- Debate in the context of regulatory philosophy
- Recognise legitimate role of regulator
- Understand “we are all regulators”
- Listen to, and learn from, one another
- Ongoing questions:
  - Why regulate?
  - Is this the best way to achieve regulatory objectives?
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