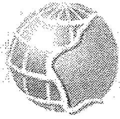

Department of Industry and Resources
Government of Western Australia

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Secretary: [signature]

Your ref:
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Committee Secretary
Standing Committee on Primary Industries and Resources
PO Box 6021
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Sir

The HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON PRIMARY INDUSTRIES AND RESOURCES INQUIRY INTO THE DRAFT OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

I refer to the House of Representatives Standing Committee on Primary Industries and Resource's invitation for submissions on its above inquiry.

Please find attached the Western Australian Department of Industry and Resources' submission for the Committee's consideration.

I appreciate this opportunity for the Department to provide its comments to the Committee and for further information please contact Ian Briggs, General Manager, Strategic Policy, Environment Division on (08) 9222 3600.

Yours sincerely

Stuart Smith
Acting Director General

30 June 2008

000081.Natalie.O'NEILL.doc - Perth

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THE DEPARTMENT OF INDUSTRY AND RESOURCES
(WESTERN AUSTRALIA)
SUBMISSION TO
THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON PRIMARY INDUSTRIES AND RESOURCES
INQUIRY INTO THE DRAFT OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

OVERVIEW

The Western Australian Government, through its "Greenhouse Strategy" (2004) and "Making Decisions for the Future: Climate Change" (2007), supports the development and application of geological sequestration of CO_2. The Government is also committed to reducing Western Australia's total greenhouse gas emissions to 60 per cent of 2000 levels by 2050, which is consistent with the national target adopted by State and Territory leaders at the April 2007 meeting of the Council for the Australian Federation.

The Western Australia Government is keen to develop the required knowledge, appropriate policy settings and effective regulatory frameworks to enable informed decisions about geological sequestration proposals. In developing the policy settings and regulatory frameworks the Government proposes to make the necessary legislative amendments reflecting the intent of the proposed amendments to the *Offshore Petroleum Act 2006* ("OPA").

Geological sequestration proposals in Western Australia are increasing in number. Since the Gorgon Joint Venture LNG proposal (circa 2003), which includes the disposal of CO_2 deep under Barrow Island located in the State's North West Shelf region, there have been a number of recent proposals and interests for the CO_2 capture and storage elsewhere in Western Australia. These include, for example, large LNG proposals in the Kimberley region and, coal fired electricity generation and coal gasification proposals in the northern and southern Perth Basin areas. To advance the opportunities for CO_2 capture and geological storage, the State Government is seeking to establish programs with the Commonwealth, clean coal project proponents, LNG project proponents and other relevant industries to perform a detailed identification and assessment of potential CO_2 geosequestration sites in Western Australia. It is also developing initial approaches to utilise the Commonwealth's National Carbon Mapping funding arrangements.

While the Western Australian Government's climate change policies support the geological storage of CO_2, the only carbon capture and storage legislation enacted so far is the *Barrow Island Act 2003*. The development of state-wide geological storage legislation will commence once the amendments to the OPA have been finalised so the intent of the geological storage provision can be addressed appropriately.

The State's reliance on fossil fuel to generate energy for industrial and domestic uses, means that effective regulatory frameworks for geological storage of greenhouse gases is of strategic importance to the State. This

highlights the importance of governments' developing clear legal rights to explore and identify suitable geological storage sites and provision of certainty and timeliness in the assessment, approvals and compliance processes.

The Department of Industry and Resources welcomes the opportunity to provide its comments on the Draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 to the House of Representatives Standing Committee on Primary Industries and Resources.

Summary of Concerns

The key concerns for the Department of Industry and Resources are:

- That any approvals process arising from the Bill will be transparent, provides certainty to decision makers and will be conducted in a timely manner.
- That the decision making for cases where GHG licence areas overlap petroleum tenements appears to be complex and has potential for concern. Of particular concern is where both the current Joint Authority/Designated Authority arrangement and the proposed Responsible Commonwealth Minister arrangement must make a decision regarding access rights.
- That the Bill does not address how the Responsible Commonwealth Minister takes into consideration State interests when taking into account "Public Interest" matters. For example, of particular concern are the cross-jurisdiction issues that may arise from the impact of GHG storage in geological formations close to State jurisdictional areas and the treatment of GHG piped from onshore sites to the GHG storage facilities.

SPECIFIC COMMENTS ON THE TERMS OF REFERENCE

This submission was prepared by the Western Australian Government's Department of Industry and Resource, the Government's lead agency for carbon dioxide capture and storage matters. These comments focus only on the Terms of Reference's points a, c, d and e.

a) Establishes legal certainty for access and property rights for the injection and long-term storage of greenhouse gases (GHGs) in offshore Commonwealth waters.

There are a number of proposals for CO_2 capture and storage throughout Western Australia. For example, the proposed LNG projects in the Kimberley and North West Shelf regions and coal fired power stations, coal gasification and industrial process in the Perth Basin and Esperance regions. These proposals are considered by the Government to be of State economic significance, and as such these and new investment proposals can be offered an approvals process which provides certainty, transparency and timeliness. Since the State's relevant GHG storage legislation will be developed to reflect the intent the OPA, it is important that the Bill is reviewed towards ensuring the OPA accommodates these principles.

Key Issues

The provisions for the regulation of GHG storage have been modelled on the system for awarding petroleum exploration, retention and production titles. There are many similarities between the petroleum and GHG systems, but there are also some significant differences.

The Bill provides a level of protection for pre-existing petroleum titles that could be an impediment to the developing GHG injection and storage industry because it may prevent access to acreage. However, this degree of protection depends on the location of future acreage releases for GHG injection and storage purposes and the extent to which proponents and other than existing petroleum companies are attracted to these GHG injection and storage opportunities. Given that the high level of technical expertise and capital required for GHG injection and storage operations largely resides with the petroleum industry, this may not create an issue until optimal GHG acreage coincides with petroleum titles.

The level of protection provided for pre-commencement petroleum titles is partly a result of including the GHG amendments in the Commonwealth's petroleum legislation. This could have been avoided by drafting a standalone Act to cover Commonwealth GHG matters. That is, a separate legislation may have been more effective in view of the possibility for the replication of many of the existing petroleum provisions, and the new administrative arrangement for a Responsible Commonwealth Minister rather than utilising the existing Designated Authority/Joint Authority structure.

c) Provides a predictable and transparent system to manage the interaction between GHG injection and storage operators with pre-existing and co-existing rights, including, but not limited to, those of petroleum and fishing operators, should these come into conflict.

The Western Australian Government has succeeded in enhancing its approvals process to ensure greater certainty, clarity and timeliness. The Department of Industry and Resources is therefore keen that the Bill should also provide the same level of enhancement in the approvals process to also ensure efficiencies in the management of the rights of GHG proponents and petroleum operators. As previously stated, it is important that the Bill provides certainty for current proposals and future investment opportunities.

In view of the importance of GHG activities for State economy, it is important that the approvals process under the Bill is efficient and, due to implications for the State GHG activities. Also, it is important for the Commonwealth to consult with the State on such matters in its deliberations.

Key Issues

GHG Administrative System

The Bill states that the responsibility for the GHG system is vested in the Responsible Commonwealth Minister and not the Joint Authority and the Designated Authority under the petroleum Acts. Also, the Bill indicates that the States will not be involved in the decision making processes for GHG titles, but the Commonwealth may contract appropriate Commonwealth and States/Territories agencies. Consultation with the States, from which most of the GHG is to be generated, would appear essential to the effectiveness of a storage system and having a ready made consultation process by way of the existing Joint Authority and Designated Authority system would appear to be appropriate.

It is understood the Commonwealth Government envisages that the GHG storage system will be adopted by the States in the spirit of the Offshore Constitutional Settlement 1979 (OCS). The OCS is a cooperative arrangement whereby the States are involved in the decision making process and administration of their adjacent areas of the continental shelf. In this regard, it is anomalous that petroleum titles and GGS titles, which fall under the OPA, do not share the same cooperative principles on which the OPA is founded.

A single authority may well avoid duplication, for example, the drafting of the title transfer provisions and the creation of a GHG title register and provide greater efficiencies. In this circumstance, where the petroleum and GHG industries are so closely related and have the potential to impact on each other so profoundly, having differing decision making systems, particularly, the ability to override existing petroleum decision making, is not the best outcome.

It appears that any rationale for not having a State government involved in the GHG assessment and approval system could equally apply to the petroleum system and that housing the GHG provisions in the OPA could be seen as a step towards diminishing the intent of the OCS.

Pipelines

The GHG provisions do not envisage a separate regime for GHG pipelines. While the responsibility for approving the GHG substances for transportation rests with the Responsible Commonwealth Minister, the grant of a pipeline licence resides with the Joint Authority.

The fact that the Responsible Commonwealth Minister can virtually determine that a GHG substance can be conveyed in a pipeline could create confusion in administration. In any event, where that pipeline originates from a State jurisdictional area, that overriding right is of no consequence. It does, however, indicate the necessity for a cooperative effort in dealing with GHG storage in both Commonwealth and State jurisdictions.

Overlapping Titles

To achieve the objectives of GHG storage it was necessary for GHG titles and petroleum titles to have the ability to co-exist as far as possible over the same areas and with regard to the public interest.

It has also been necessary to recognize those petroleum interests which pre-existed the advent of GHG titles and provisions for pre-commencement petroleum title. Accordingly, where the Responsible Commonwealth Minister is convinced that GHG operations pose a significant risk to pre-commencement petroleum title operations, the Minister shall not approve the GHG operational activity, unless the petroleum and GHG title holders agree.

Conversely, operations in a post-commencement petroleum title which have been declared by the petroleum legislation Minister that petroleum operations will have an adverse impact on GHG injection and storage operations, must also be approved by the Responsible Commonwealth Minister.

While it is important that interests of each industry be protected, the fact that the Designated Authority can approve petroleum operations which may be overridden by the Responsible Commonwealth Minister could create administrative difficulties. It even appears that when the Responsible Commonwealth Minister is declaring a petroleum title as being a risk to GHG operations, this Minister is not obliged to inform the Designated Authority. This could be avoided if GHG approvals conformed to the Joint Authority and Designated Authority approval system.

The provision that the parties are able to reach agreement despite that there being a risk of a significant impact on the petroleum operations is perplexing, even given that the agreement must not be contrary to the public interest and subject to the approval of the Responsible Commonwealth Minister. Any damage to petroleum resources resulting from the operations in question may reflect badly on the Commonwealth Government.

An unusual provision of the GHG assessment permit is the right to recover petroleum and the further provision that petroleum so recovered does not belong to the GHG permit holder. The question of ownership of the petroleum is vexed. If the area is under a petroleum title, then perhaps it should belong to that holder albeit that a title holder is only entitled to petroleum recovered by that title holder.

GHG Injection Licences

The injection licence system appears to be complex. Given that GHG storage is a new activity and its effects over a long period of time has yet to be established, it is important that the process receives careful consideration, particularly in terms of ongoing liability. It will take time to establish whether this complexity and ongoing liability will be a disincentive to investment in the scheme and compromise the efforts to reduce GHG emissions.

It is also uncertain as to whether the five year periods during which no continuous injection operations occur, the prelude to ending an injection licence, could provide an opportunity for a company holding a GHG injection licence to wind down the company and avoid post-closure liabilities.

Petroleum Injection and Storage Rights
Presently, a petroleum licensee is permitted to return GHG to a reservoir to assist hydrocarbon recovery or dispose of CO_2 and methane stripped from petroleum recovered in its licence area. While the ability to use GHG to assist in hydrocarbon recovery is retained in the Bill, the permanent storage of stripped CO_2 requires a GHG injection licence.

The amendments covering this area seem uncertain and the Commonwealth has indicated that public comment is invited on the scope of GHG storage activities by the holders of petroleum production licences. The Commonwealth has advised that a petroleum licensee would not need to undertake long term monitoring of CO_2 returned to a petroleum reservoir, if less than the total volume removed is returned. This obligation for a petroleum licensee is less onerous than a GHG injection licence operation and could serve as a disincentive to the future development of a GHG industry.

d) Promotes certainty for investment in injection and storage activities.
While one of the overarching concerns for the Department of Industry and Resources is to provide a high level of certainty, clarity and timeliness in the approvals process, it is also important that the Government and GHG project operators have certainty about ongoing operations under the GHG licence from the time of the approvals to project closure.

Key Issues
The Department of Industry and Resources is uncertain about the extent of the powers afforded to the Responsible Commonwealth Minister regarding "post-grant" issues, which can affect the GHG licence holder's title rights.

The ability to "unwind" a licence grant based on circumstances unknown at the time of granting the licence may create risks and uncertainty to the future of an affected GHG project.

The Bill provides for the Responsible Commonwealth Minister to take into account the "public interest" in the approvals process including the resolution of disputes and fostering negotiations between the parties. The Department of Industry and Resources is uncertain what the Responsible Commonwealth Minister will take into account in consideration of the "public interest". The Department of Industry and Resources considers that it is necessary for the Responsible Commonwealth Minister to consult with it on matters of State interest. For example, consultation with the State would be necessary if onshore sources of GHG are best stored within petroleum licence areas in the Commonwealth's offshore waters. Also, if a petroleum resource is discovered in a GHG license area, it may also be of State interest. In both these examples, it is important for the State's interests are considered as part of the "public interests" to be considered by the Responsible Commonwealth Minister.

The Department of Industry and Resources is also concerned that the Bill does not address how cross-jurisdictional issues will be resolved. For example, how the movement of the stored GHG across into the State's

jurisdictional areas will be resolved and how GHG pipelined from onshore facilities to GHG storage sites will be addressed. Also, it is uncertain if the Responsible Commonwealth Minister will remain solely responsible for this stored GHG and assume liability.

e) Establishes a legislative framework that provides a model that could be adopted on a national basis.

While the Department of Industry and Resources supports the intent of the Bill, it is premature to comment on whether it provides a model for the development of GHG policy and legislation nationally. The Department of Industry and Resources would also refer to the policies and legislative frameworks being developed by the Queensland and Victorian governments principally because they address onshore and offshore GHG matters.

Key Issues

Despite the concerns raised above, the GHG amendments appear to establish a legislative framework that, with consideration, will provide a model that could be adopted on a national basis. In keeping with the requirements of the OCS, WA will reflect, as far as practicable, the intent of the GHG amendments to the State's *Petroleum (Submerged Lands) Act 1982* or other legislation it deems appropriate for GHG capture and storage.

Unlike the amendments required for the implementation of the NOPSA arrangements in 2004, achieving direct alignment between the Commonwealth and the States petroleum submerged lands Acts have been severed with the commencement of the OPA.

In contrast to the Commonwealth approach, State GHG legislation will have to recognise and address the potential for cross-jurisdictional or trans-boundary storage from onshore areas to the designated waters area covered by the WA petroleum submerged lands legislation. This may also be the case in other jurisdictions.