

Submission from Straterra To MBIE on the Proposed Infringement Offence Regulations October 2021

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to comment on the [proposed infringement offence regulations](#).

Submission

3. Straterra supports and promotes industry compliance and acknowledges that more infringements are currently occurring than is desirable from the point of view of effective regulation.
4. We agree there is a need for additional enforcement mechanisms for the New Zealand Petroleum and Minerals regulator to apply to operators who fail to comply with the requirements of their licenses and permits.
5. A lower burden on compliance and law enforcement activities frees up time, perhaps, for focusing on the core business of NZP&M which is to administer the Crown minerals permitting system, and enable responsible prospecting, exploration and mining.
6. As set out in para 25, currently NZP&M has the ability to:
 - send a letter requesting the permit holder address the non-compliance;
 - take action through the courts; or,
 - notify the intention to revoke a permit and following through with revocation if non-compliant behaviour is not rectified.
7. Sending a letter is often not effective whereas taking action through the courts or revoking a permit, in most cases, are often too extreme an outcome.
8. The proposed infringement fees are a mechanism that strikes an appropriate balance between these extremes.
9. It needs to be recognised that non-compliance, such as the late filing of returns, is often unintentional and/or can often be a result of something that is outside of the control of the permit holder. Things such as illness, business disruption or administrative errors, for example, are often valid reasons for the offence.

10. With that in mind, we argue there needs to be a “please explain and rectify within a timeframe” option added into the process before fines are imposed or further action is taken. That would be a reasonable and pragmatic approach to regulation.
11. If NZP&M doesn’t receive the required response after this action, a move to infringement offences is appropriate.
12. Para 18 of the consultation document states that the enforcement officer has discretion and the taking of action needs to be fair and reasonable in a Court context. But this is subjective: hence our proposal that the officer first takes a “please explain and rectify” approach.
13. Some sort of dispute resolution regime should be considered. We note that the Legislation Guidelines 2021 opens the way for appeal or review processes where a public body or agency makes a decision in this way.
14. We understand there remain practical problems with NZP&M permit administration systems and non-compliance can result from NZP&M system errors. For example, there have been situations where permit holders have lodged on time but due to administrative issues within MBIE, the return has been considered to have been made late.
15. Where this is the case, a fine is not appropriate and there needs to be a continuation of NZP&M improving its systems and communicating outcomes to licence and permit holders and applicants. Of course, the infringement notice should only be applied when the infringement circumstances meet clearly stated criteria.
16. Fines must be applied consistently and fairly and not be open to subjective application to certain individuals. To mitigate against this MBIE could create and publicly publish not only the criteria but also transparent operational guidelines for officers to follow for when imposing an infringement notice.
17. We note some instances of where the relationship between NZP&M and some permit holders is stretched, so to speak. Belligerence on the part of the holder towards NZP&M and compliance means infringement offences may be appropriate to deal with some situations. But there will need for balance so that a co-operative and supportive relationship between the Crown and the permit/licence holder is achieved.
18. Overseas experience has been that where there is inconsistency in applying fines or there is inadequate administrative processes around issuing and collecting of the fines, the impact of on-the-spot fines on behaviour has been short term.
19. Finally, we caution that one offence should not see more than one infringement fee being applied. For example, if a permit holder fails to provide a royalty return on time it is likely they will also not be paying their royalty on time.

Recommendations

- We **support** the need for NZP&M to strengthen its ability to carry out monitoring, compliance and enforcement functions more effectively and efficiently.

- We **support** Option 3 – an infringement fee of \$500 for individuals and \$1000 for body corporates for offences relating to Tier 2 permits, and \$1000 for an individual and \$3000 for body corporates for offences relating to Tier 1 permits.
- We **recommend** adding a “please explain and rectify within a specified timeframe” step to the process before infringement fees are imposed.
- We **recommend** NZP&M taking steps to prevent failures in its own permit administration system leading to compliance failures on the part of permit holders and applicants and ensuring that no infringements in such cases attract fines.