

Questions & Answers

Significant Discovery Declarations and Directly Affected Persons

What is a Significant Discovery?

The *Petroleum Resources Act* (PRA) defines a Significant Discovery as “a discovery indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature, and having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production”.

What is a Significant Discovery Declaration?

A Significant Discovery Declaration (SDD) is a public declaration by the Government of the Northwest Territories Regulator of Oil and Gas Operations (Regulator) or his/her delegate (the decision-maker), that a discovery of oil or gas has been made that meets the definition of a Significant Discovery in the PRA.

A SDD also describes the area of land for which the Significant Discovery has been declared, which is referred to as the Significant Discovery Area (SDA).

An SDD only applies to Petroleum Lands, as defined in the PRA. These are lands for which the Commissioner of the Northwest Territories holds administration and control of the mineral rights. Lands for which Aboriginal organizations own the mineral rights are not included in Petroleum Lands.

What can an operator do with an SDD?

The operator may apply for a Significant Discovery Licence (SDL) from the Government of the Northwest Territories (as distinct from the Regulator).

An SDL gives the operator the exclusive right to:

- Explore for and drill and test for petroleum;
- Develop those petroleum lands in order to produce petroleum; and
- Obtain a production licence.

An SDL gives the operator these rights for as long as the underlying SDD remains in place. An SDL does not authorize any oil and gas work or activity, which would require additional authorizations from the Regulator as well as authorizations from a land and water board.

Who decides whether there has been a Significant Discovery and how large the SDA is?

The Regulator, or his/her delegate, determines whether a Significant Discovery has been made and, if so, how large the SDA is.

What information is used to determine if there has been a Significant Discovery and how large the SDA is?

The decision-maker uses information from wells drilled in the area, seismic data and other scientific and engineering research to determine if there has been a Significant Discovery and how large the SDA is.

Who provides the information used to determine if there has been a Significant Discovery and how large the SDA is?

The information comes from:

- The operator's original application and their responses to any information requests the decision-maker issues;
- Directly Affected Persons and their responses to any information requests the decision-maker issues; and
- Court decisions, other publicly-available information and the knowledge and experience of the technical support team.

Does an SDD authorize any activity?

No. A SDD does not authorize any activity in the SDA. Any oil and gas work or activity in the SDA still requires an authorization from the Regulator and may require a land use permit and/or water licence from the appropriate Land and Water Board.

Does a SDD apply to lands to which an Aboriginal organization holds the mineral rights?

No. Even though the geological feature may extend to those lands, an SDD only applies to Petroleum Lands, as defined in the PRA. These are lands for which the Commissioner of the Northwest Territories holds administration and control of the mineral rights. Lands for which Aboriginal organizations own the mineral rights are not included in Petroleum Lands.

Who is a Directly Affected Person (DAP)?

A DAP is an individual or an organization the decision-maker considers to be directly affected by a proposed SDD.

The PRA does not define "directly affected". However, the context of the PRA and the limited scope of a SDD make it clear that not every person who is interested in the matter would be considered a DAP under the PRA.

A DAP will typically be the holder of an "interest" (as defined in the PRA) or the owner of mineral rights bordering on the exploration licence held by the applicant for the SDD.

Why does the Regulator want to identify DAPs?

When a company applies for a SDD, the information it provides often applies only to lands for which it holds an exploration licence. However, because a Significant Discovery may include a geological feature which is larger than those lands, a SDA may extend onto other, adjacent lands. Identifying DAPs allows the decision-maker to

receive additional technical information (for example, well history, seismic data, etc.) that will help to determine the size of the SDA.

How do I find out about applications for SDD and how do I become a DAP?

When the Regulator receives an application for a SDD a public notice is posted on OROGO's website (www.oilandgasregulator.iti.gov.nt.ca) and may be sent to other organizations and operators in the area. The notice asks people or organizations who believe they are directly affected to apply to the Regulator to become DAPs.

When applying to be a DAP, the person / organization must state:

- Why they believe they are directly affected by the proposed SDD; and
- What technical information (for example, well history, seismic data, etc.) they will be able to provide to the decision-maker to help him/her to determine the existence and extent of any Significant Discovery.

The company that applied for the SDD has an opportunity to comment on any DAP applications and the persons / organizations who applied to be DAPs also have an opportunity to respond to the applicant's comments.

The decision-maker makes the final decision on which persons / organizations are considered to be DAPs.

How do DAPs participate in the Significant Discovery process?

DAPs may participate in the Significant Discovery process at two points: when a Notice of Intended Decision is issued, and at a hearing (if a hearing is requested).

Notice of Intended Decision

Before making a SDD the decision-maker issues a Notice of Intended Decision to the company that applied for the SDD and to the DAPs.

The Notice of Intended Decision explains whether the decision-maker believes there has been a Significant Discovery and how large the decision-maker believes that discovery to be, based on the information filed by the applicant.

DAPs have 30 days to request a hearing into the Significant Discovery after the Notice of Intended Decision has been sent.

If the applicant and the DAPs do not request a hearing, then the decision-maker issues the SDD as described in the Notice of Intended Decision. The SDD will be shared directly with the DAPs.

Hearings

If a DAP requests a hearing, the Regulator may delegate the conduct of the hearing to a new decision-maker to make a final decision on the SDD, based both on the original application and any DAP requests.

The decision-maker will issue a Hearing Order, which explains where and when the hearing will be held, what forms of evidence can be submitted by the DAP and what the deadline for submitting evidence is.

All hearings are conducted in-camera, which means that the hearing is not open to the public and the DAP does not get to see the information submitted by other participants in the process.

The decision-maker will review the information submitted by a DAP and may ask for more information before the hearing. At the hearing, the decision-maker will hear from the DAP and will ask any questions necessary to clarify the DAP's evidence.

After the hearing is complete, the decision-maker will consider the evidence and may declare that a Significant Discovery has been made. If a Significant Discovery is declared, the declaration will identify the extent of the SDA. The SDD will be shared directly with the DAP.

Why is the hearing process for a Significant Discovery Declaration not conducted in public?

Under Section 91 of the PRA, information or documentation provided for the purposes of that Act remains confidential, with certain exceptions.

The evidence filed as part of an application for a SDD may include important geological, geophysical, geotechnical or engineering information resulting from a company's exploration activities, which must be held in confidence by the Regulator and may only be disclosed in accordance with Section 91.

What happens if a DAP does not request a hearing after receiving the Notice of Intended Decision, but other DAPs do?

If a DAP does not request a hearing after receiving the Notice of Intended Decision, there will be no further contact from the decision-maker or participation in the process unless the final decision will be different from that issued in the Notice of Intended Decision.

If the decision-maker determines the final decision will be different from the Notice of Intended Decision, any DAPs that did not request a hearing would have an opportunity to comment on the new intended decision before it is finalized. These comments are expected to focus on additional technical information (for example, well history information, seismic data, etc.) that could influence the decision-maker's understanding of the size of the SDA.