

The risks of “zombie” consent / operating conditions

One of the more common scenarios we see in our work are situations where businesses are happily doing their thing, completely unaware of lurking problem conditions in their approvals and operating permit / licence. These “zombie” conditions, if enforced, can have a profound impact on the operation of the business.

How do “zombie” conditions come about?

There are three main ways these conditions can come about:

1. Innovation and progression – Technology and processes are continually evolving. Conditions written even a few years ago may have limited applicability to new and improved operations, or worse, perverse effects on the operation of a business.
2. Incomplete regulatory negotiations – where no agreement is reached on specific conditions between a regulator and a business, and a generic condition is used (that may have limited applicability) in its place.
3. Operational “creep” – Where business operations slowly extend beyond the boundaries of the consent / operating conditions over time.

What risks do they pose?

Approval / operating conditions cannot be ignored, just because you may believe it has limited or no applicability to your current operations. It still forms part of the legal permission for your business to operate. “Zombie” conditions result in risks to your business that cannot be easily quantified. It can almost be compared to a buried unexploded bomb: it can be there for years, even decades, without issue. Then one day, without warning, it detonates, causing massive amounts of damage.

A great example of this is the requirements around the treatment of grease trap waste in NSW to produce material that can be land applied as a soil amendment which were written in 2014. The conditions state that the treatment must gravity settlement for at least 4 hours, so the fats and oils, the aqueous liquid waste and the solids can separate.

Currently, centrifuge technology exists that can produce a better outcome more efficiently and much quicker. However, using this technology, without the 4 hours of gravity settlement occurring first, results in the operator being technically in non-compliance.

The enforcement of a zombie condition can expose your business to the full range of consequences of regulatory non-compliance, including:

- Criminal prosecution
- Financial penalties,
- Legal action by customers or competitors,
- Operational disruption / downturn,
- Insurance and financing implications, and
- Reputation damage

Can “zombie” conditions be managed?

Absolutely! If you identify any approval or operating conditions that you believe have limited applicability / are inconsistent with your current or you do not know how they originated, get in touch with the regulator that administers them and open a dialogue.

You’ll probably find that your regulator is grateful for you identifying “zombie” conditions. It potentially prevents them from spending time and resources auditing / enforcing conditions that have little to no applicability to your business and no longer provide any benefit to the broader community.

Who can help me identify and manage “zombie” conditions?

Get in touch with JS Regulatory Services. We love making regulation work best, for everyone.



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