

### 1. Introduction

The operator of a facility is the *person* who has the day-to day management and control of the facility and its operations. A facility includes a licensed pipeline.

For Commonwealth waters, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) places a duty of care on the operator of a facility [OPGGSA Schedule 3, Clause 9]. The Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 [OPGGS(S)] place further obligations on operators.

The OPGGS(S) and relevant State Pipelines Regulations also require NOPSEMA to maintain a register of operators of facilities.

### 2. Scope of this Guidance Note

This guidance note describes the criteria used by NOPSEMA to determine whether or not a person nominated as an operator for a facility under OPGGS(S) Regulations, or a designated coastal waters pipeline under the relevant State regulations, should be accepted as the operator as defined in the relevant regulation.

In general, references to regulatory requirements in the material provided below are in relation to Commonwealth legislation. Similar provisions apply in designated coastal waters where States/NT have made legislation that mirrors the Commonwealth legislation.

### 3. Relevant Regulations

Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009

[Regulation 2.3]

- and applicable State/NT legislation.

### 4. NOPSEMA's Decision Making Criteria

NOPSEMA must accept the nomination of a *person* as an operator if it is satisfied that the nominated *person* has or will have *day-to-day management and control* of the facility, or proposed facility, and its *operations*, but must reject the nomination otherwise. Similar criteria exist for acceptance of a nominated operator for a licensed pipeline in designated coastal waters.

In the context of the acceptance requirements:

- A *person* is interpreted to mean an individual or body corporate;
- A *facility* is a vessel or structure, including a pipeline, as defined in the OPGGSA [OPGGSA Schedule 3, Clause 4];
- *Operation* means an activity.
- The nominator must be the facility owner or petroleum titleholder or pipeline licensee; and
- The nominated *person* must have accepted the nomination.

NOPSEMA will make reasonable enquiries as it considers necessary to satisfy itself that the nominated operator meets the criteria below.

#### 4.1. Nominated Operator to be able to deliver on OHS Obligations

NOPSEMA's view is that a useful guide to the meaning of the words *day-to-day management and control* is to be gained by looking at the operator's duty of care as specified in paragraphs (a) and (b) of clause 9(1) and paragraphs (a) to (i) of clause 9(2) of Schedule 3 of the OPGGSA. The full operator duty of care is set out in section 7 of this guidance note. Clearly, an operator must be in a position to fulfil both the general and specific duties in all their aspects.

In light of the duties imposed on operators by clause 9 of Schedule 3 to the OPGGSA, NOPSEMA treats having day-to-day management and control as meaning, on a routine or daily basis, having **and exercising** authority over:

- the physical environment at the facility;
- permitting of persons to board the facility;
- choosing the workforce, including contractors and employees of contractors;
- what activities are carried out at the facility; and
- the way in which these activities are carried out – systems of work implemented at the facility, eg permit to work.

Note that this is not intended as an exhaustive list. In each case, the operator would either need to make the decision itself or through its representative on board or establish and secure compliance with processes that ensure that outcomes (e.g. competency standards) nominated by the operator are achieved.

#### 4.2. Single Entity Requirement

The 2003 amendments to the OPGGSA upgraded the OHS regime applicable to facilities. An important element of this upgrade was to require that there be a single entity (individual or corporate) that has day-to-day management and control of each facility. The Explanatory Memorandum to the 2003 amendments indicated that placing duties on the operator, who is the person most able to control the risk at the facility, generally strengthens the regulatory regime.

Typically the operator would have both onshore and offshore management and control.

In relation to the kinds of decisions that are made by the operator's managers onshore, NOPSEMA would need to be satisfied of the ability in practice for them to make the decisions in relation to the facility (both in terms of the workforce and the physical environment at the facility) that will enable the proposed operator to fulfil an operator's duties of care as specified in paragraphs (a) and (b) of clause 9(1) and paragraphs (a) to (i) of clause 9(2) of Schedule 3 of the OPGGSA.

In relation to the offshore management, in order for NOPSEMA to be satisfied as to the day to day management and control, a proposed operator would need to have an individual physically present at the facility<sup>1</sup> who is, as far as the workforce at the facility are concerned, at the top of the chain of command in relation to all activities at the facility and the physical environment at the facility. This power of command must be exercised in practice by the operator's employee or an individual contractor of the operator. The power of command must not be merely stated as being so in the safety management system or in an agreement between the operator and (e.g.) the titleholder of the acreage. The individual exercising the power of command would also be the Operator's Representative [OPGGSA Schedule 3, Clause 6] and typically be the Offshore Installation Manager (OIM) (or equivalent position e.g. the master of a vessel if the vessel is a facility).

In general the entity that employs or engages the OIM and directs the allocation of resources will be the appropriate person to register as the operator.

#### 4.3. Specialised operations

<sup>1</sup> This may not be applicable to pipelines

The above *day-to-day management and control* test does not mean that the Operator's Representative needs to directly supervise each particular area of work on the facility. Often work can only be supervised by a person with certain specialist skills. Moreover in some cases an operator or the titleholder may bring a contractor with specialised skills and equipment (complete with a fully competent work group) to carry out certain work on the facility. In these cases, the content of the operator's duty of care can be different, as far as the carrying out of the work on the facility is concerned.

For instance in the case of contracted specialist work, the operator's duty to 'take all reasonably practical steps' [OPGGSA Schedule 3, Clause 9(1)] to ensure that the facility's activities are safe, does not necessarily require the direct on-site involvement by the operator. However the operator would remain responsible for maintaining sufficient oversight of the work such that the operator would be in a position to intervene where that work unacceptably puts at risk the safety of the facility or the workforce of the facility. This would require the operator, for instance, to ensure that the specialist contractor:

- has identified the hazards, assessed the risks and has controls in place such that the risk to persons from that work is as low as reasonably practicable;
- has processes and procedures which provide for the OHS of persons on the facility;
- was conducting work in accordance with those safe processes and procedures;
- also adhered to all the operator's processes and procedures applicable to maintaining the OHS of all persons at the facility, and
- does not undertake operations that would unacceptably put at risk the health and safety of persons on the facility at risk.

In the case where a specialist contractor has been brought on board by the titleholder (who is not the operator) the management and control that the operator would have in relation to the contractor's operations would be exercised via the power that the operator must, in practice, have to choose the workforce at the facility, including contractors and employees of contractors.

#### **4.4. An Operator is required for each stage in the facility's life cycle**

Over the life cycle of a facility or pipeline, there may be a range of operators. For instance, the *person with day-to-day management and control* during construction activities might not be the same *person* who has *day-to-day management and control* during the operation stage of the life of the facility. Therefore, over its life, the facility may have two or more operators (however not at the one time). Likewise, the *person* who has *day-to-day management and control* during the laying of a pipeline might not be the same person with that control during the pipeline's operation. NOPSEMA will give consideration to the life cycle of the facility in assessing whether or not a *person* is or will be the operator.

### **5. NOPSEMA to advise parties of its decision**

NOPSEMA must notify the following people of the decision to accept or reject the nomination of a person as an operator:

- the owner, titleholder or pipeline licensee who made the nomination; and
- the nominee.

If the nomination has been rejected by NOPSEMA, the reasons for the rejection must be provided [OPGG(S) Reg 2.3(5)]. The reasons given for the rejection should focus on the criteria in this guidance note.

## 6. Removal of Operator from the Register

NOPSEMA must remove the operator's name from the register if any of the following people notify NOPSEMA that the registered operator has ceased to have day-to-day management and control of the facility (or pipeline) and operations at that facility (or pipeline):

- the facility owner;
- the titleholder;
- the operator of the facility (or the pipeline); or
- the pipeline licensee who nominated the operator.

If NOPSEMA's assessment, investigation or inspection processes identify that the registered operator does not, or will not, have *day-to-day management and control* of the facility and operations at the facility, NOPSEMA may remove the operator from the register [OPGGS(S) Reg 2.4(4)]. However, before this can occur, NOPSEMA must:

- give notice of its intention to remove the operator from the register, to the person who nominated the operator and to the operator;
- allow a period of 30 days for the nominator and the operator to make representations; and
- consider those representations and continue to believe on reasonable grounds that the operator does not, or will not, have day-to-day management and control of the facility and operations at the facility.

## 7. Duty of Care

Clause 9(1) of Schedule 3 of the OPGGSA requires that the operator of a facility must take all reasonably practicable steps to ensure that:

- (a) the facility is safe and without risk to the health of any person at or near the facility; and
- (b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

Clause 9(2) of Schedule 3 specifies that the operator of a facility is taken to be subject, under subclause 9(1), to each of the following requirements:

- (a) to take all reasonable practicable steps to provide and maintain a physical environment at the facility that is safe and without risk to health;
- (b) to take all reasonable practicable steps provide and maintain adequate facilities for the welfare of all members of the workforce at the facility<sup>2</sup>;
- (c) to take all reasonable practicable steps to ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health;
- (d) to take all reasonable practicable steps to implement and maintain systems of work at the facility that are safe and without risk to health;
- (e) to take all reasonable practicable steps to implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility;
- (f) to take all reasonable practicable steps to provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the health and safety of persons at the facility; and
- (g) to take all reasonable practicable steps to monitor the health and safety of all members of the workforce and keep records of that monitoring; and

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<sup>2</sup> Note this is not the complete list of requirements of the operator.

- (h) to take all reasonable practicable steps to provide appropriate medical and first aid services at the facility;
- (i) to take all reasonable practicable steps to develop, in consultation with members of the workforce and any workforce representatives, a policy, relating to occupational health and safety, that will:
  - (i) enable the operator and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and
  - (ii) provide adequate mechanisms for reviewing the effectiveness of the measures.

## **8. Related Documents**

N-01000-PL0002 Policy – Operator Nomination, Registration and Deregistration  
N-01000-SOP0003 Procedure – Operator Nomination and Registration  
N-01000-SOP0288 Procedure – Operator Deregistration  
N-01000-FM0065 Form – Worksheet for Analysis of Operator Status  
N-01000-FM0009 Form – Operator Registration Record of Decision

## **9. Disclaimer**

This correspondence from NOPSEMA is intended to provide guidance as to the approach that NOPSEMA takes in carrying out its regulatory functions under powers conferred by the Commonwealth, State and NT Petroleum (Submerged Lands) Acts and Regulations under those Acts. Any views expressed in this correspondence should not be relied on as advice on the law, nor treated as a substitute for legal advice in any relevant situation.