New arrangements for offshore petroleum environmental management regulation
Introduction

The Commonwealth Government is progressing legislative reform to offshore petroleum regulation through the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011. NOPSA, the National Offshore Petroleum Safety Authority, is working with the Department of Resources, Energy and Tourism (DRET) and Designated Authorities (DA) to provide a smooth transition and implementation of the changes.

The National Regulator Act will amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA), expanding NOPSA’s existing regulatory functions to include environmental management. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) will commence operations on 1 January 2012 as Australia’s single national regulator for offshore petroleum health, safety, well integrity and environmental management.

Initially, NOPSEMA’s operations will be restricted to Commonwealth waters, however the legislative amendments include provision for the states and Northern Territory to confer responsibility for designated coastal waters to NOPSEMA. This conferral of powers would enable seamless regulation of the industry from the shore to the outer jurisdiction of Commonwealth waters.

In order to provide further information on the transition from NOPSA to NOPSEMA, this information booklet is intended as a summary of the main aspects relating to offshore petroleum environment management regulation under the new arrangements, with a focus on environment plan assessment activities.

Transition from Designated Authorities to NOPSEMA

The legislative reform process will also result in amendments to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations). These amendments will make provision for the transition of responsibilities from DAs to NOPSEMA on 1 January 2012. NOPSEMA replaces the DAs as regulator for offshore petroleum environmental management in Commonwealth waters and subsequently in designated coastal waters where powers are conferred. At the same time, NOPSEMA will also replace the DAs as the regulator for all environment plans in place on 1 January 2012. As such:

- DAs will no longer exist from 1 January 2012 and will be unable to make decisions or have their departments perform other regulatory functions for environmental management in Commonwealth waters after commencement of NOPSEMA.
- The Environment Regulations remain the basis for environmental management regulation. Environment plans accepted prior to 1 January will remain accepted under the new arrangements, with revision and submission requirements continuing to be applied as currently outlined in the regulations but with NOPSEMA as the regulator.
- Transition regulations will be put in place to provide clarity of status for environment plans submitted to the DA but for which a decision has not been made by the DA prior to 1 January 2012.
- The Commonwealth Minister remains responsible for decisions under the Regulations for greenhouse gas activities in Commonwealth waters.

Jurisdiction and functions

The amended offshore petroleum legislation will provide a range of functions and powers to NOPSEMA in Australia’s offshore areas:

- Environmental management regulation of offshore petroleum and greenhouse gas activities in Commonwealth waters
- Environmental management regulatory functions conferred on it by a state or the Northern Territory in coastal waters.
NOPSEMA’s specific regulatory functions in relation to environmental management in Commonwealth waters, or designated coastal waters (when conferred), will be:

- maintenance of a record of operators
- assessment of environment plans, including associated oil spill contingency plans (OSCPs)
- provision of advice to persons on matters relating to environmental management
- provision of information, assessments, analysis, reports, advice and recommendations to the Commonwealth Minister on greenhouse gas storage activities on request
- provision of a contract for related services on a cost recovery basis for state/Northern Territory governments and foreign governments
- development and implementation of effective monitoring and enforcement strategies to ensure compliance under environmental management law
- monitoring of compliance with environment management law
- investigation of accidents, occurrences and circumstances in regard to deficiencies in environmental management
- monitoring of environmental incidents and reporting of investigations, as appropriate, to the responsible Commonwealth Minister and state and Northern Territory Ministers.

**NOPSEMA approach and objectives**

NOPSEMA will be required, under the amended OPGGSA, to develop and implement a Corporate Plan. The current Corporate Plan, which includes NOPSA’s vision and mission, can be found on nopsa.gov.au. It will be revised to reflect the OPGGS (National Regulator) Act once the amendments are incorporated.

NOPSEMA will aim to provide certainty for industry and a reduction in regulatory burden through:

- promoting due process, making timely and competent decisions based on criteria set out in the regulations
- not creating processes outside the regulatory requirements
- ensuring that requirements and interventions by the regulator are not arbitrary.

The key objectives of NOPSEMA’s approach to environmental management regulation will be to achieve a seamless transition of environmental management of offshore petroleum activities from Designated Authorities to NOPSEMA, and to ensure that any offshore petroleum or greenhouse gas storage activity is carried out in a manner consistent with the principles of ecologically-sustainable development and in accordance with an accepted environmental plan.

**Regulatory management system**

The NOPSEMA Regulatory Management System provides a framework for management of regulatory activities and under this system, activities will be categorised within the following areas:

- **Assessment** - providing a documented, consistent and systematic approach to assessment of submissions
- **Inspection** - ascertaining whether activities are in compliance
- **Investigation** - seeking evidence of non-compliance as a basis for learning and enforcement
- **Enforcement** - securing compliance

Documents describing the function and application of NOPSEMA’s activities and regulatory processes for an environmental management will be implemented, and include:

- **Policies** - define the principles the regulator will apply when undertaking its defined functions and regulatory activities; statements of “why” or “what” the regulator will do
- **Background** - provide rationale behind the regulator’s policy statements, if needed to support the policy position. May contain examples, case law or guidance as required
- **Guidelines** - provide guidance on core concepts, good practice and possible approaches and the regulator’s expectations in relation to a regulation requirement or policy
- **Procedures** - describe “how” the regulator performs a process according to its policy
- **Work Instructions** - provide detailed description of the operation of a specific system
Environment plan assessment process

NOPSEMA will be committed to promoting due process, making timely and competent decisions that are based on criteria set out in the regulations, adhering to regulatory processes efficiently and effectively, and undertaking informed intervention action where required.

Regulations provide the basis for NOPSEMA’s processes

The OPGGS (Environment) Regulations detail the regulatory basis for environmental management by NOPSEMA. The Regulations’ definition of environment includes social, economic and cultural features associated with a range of natural and social environmental factors.

The Regulations require an operator to have an accepted environment plan in place for an activity, with the objective of ensuring that the activity is conducted in accordance with a plan that has appropriate environmental performance objectives and standards as well as measurement criteria for determining whether the objectives and standards are met. All elements must be considered in plans prepared for petroleum activities.

The Regulations utilise a risk-based approach for managing environmental performance through the environment plan regime, which requires a demonstration that the environmental impacts of petroleum activities are of an acceptable level and are reduced to ‘as low as reasonably practicable’ (ALARP). This approach enables petroleum operators to employ innovative and effective environmental protection measures that are tailored to their specific circumstances to achieve superior environmental practice and outcomes.

An over-riding consideration in preparing an environment plan is that the regulator must ultimately refuse to accept the plan if it does not adequately address the risks associated with the activity. It is then an offence under the Regulations to proceed without an accepted environment plan in place for an activity.

Environment plan preparation

An Interim Guidance Note for environment plan preparation will be made available prior to commencement of NOPSEMA to replace the existing DRET Guidelines for Preparation and the Submission of an Environment Plan (2008). This will provide operators of activities with context of the objectives of the regulations and identify the general issues that should be considered in preparing an environment plan for submission to NOPSEMA under the Environment Regulations. As with other NOPSA guidance, this document will indicate what is explicitly required by the regulations, discuss good practice and suggest possible approaches.

The guidance will clarify the regulator’s application of the regulations in relation to specific issues, including:

- **Structure of an environment plan** - this is a matter for the operator, however the plan submitted must include all relevant information the regulator needs to make a decision against the acceptability criteria in the Regulations. Operators are encouraged to review previously structured ‘generic’ and ‘bridging’ environment plans and determine whether these provide the most effective way to demonstrate that an environment plan submission meets the acceptability criteria.

- **References** - while it is not essential that referenced documents be provided as part of the environment plan, sufficiently detailed discussion on the relevant aspects contained in the referenced material should be included in the plan to a level that enables NOPSEMA to make a decision on whether the plan meets the acceptability criteria.

- **Consultation in advance of submission** - the operator must demonstrate appropriate consultation with relevant authorities and other stakeholders. Provision of evidence of the outcomes of consultation, how this may relate to environmental risk and how this has been addressed by the operator in preparing the environment plan is needed to determine whether the consultation has been appropriate. For example, consultation with spill response organisations would be expected where use of third party resources to combat an oil spill has been documented in the environment plan/OSCP.
Operator
Under Regulation 4(1) ‘operator’ for an activity means:

a. if there is a person recorded by the regulator as the operator of the activity under Regulation 35 — that person; or

b. in any other case:

i. if there is a petroleum instrument — the person responsible to the petroleum instrument holder for the overall management of operations of the activity (whether or not the operations have commenced) — that person; or

ii. if there is a greenhouse gas instrument — the person responsible to the greenhouse gas instrument holder for the overall management of operations of the activity (whether or not the operations have commenced); or

iii. if there is no petroleum instrument or greenhouse gas instrument — the person performing the activity.

Note: the definition of ‘operator’ in the Environment Regulations should not be confused with other uses of the term operator, including operator of a facility (definitions and application under the Safety Regulations), which is not necessarily the same organisation or same person as that for the purposes of operating an activity as defined in the Environment Regulations.

Petroleum Activity
Under Regulation 4(1) ‘petroleum activity’:

a. means:

i. any operations or works in an offshore area carried out under a petroleum instrument, other authority or consent under the Act or the regulations; and

ii. any activity relating to petroleum exploration or development which may have an impact on the environment; and…

b. includes:

iv. seismic or other surveys

v. drilling

vi. construction and installation of a facility

vii. operation of a facility

viii. significant modification of a facility

ix. decommissioning, dismantling or removing a facility

x. construction and installation of a petroleum pipeline

xi. operation of a petroleum pipeline

xii. significant modification of a petroleum pipeline

xiii. decommissioning, dismantling or removing a petroleum pipeline

xiv. storage, processing or transport of petroleum.

Note: this definition of activity therefore covers both activities under a petroleum instrument (title) and activities relating to exploration or development of petroleum that are may not be carried out under an instrument. It is recognised that the intention of the OPGGSA is that petroleum activities should, and in many cases must, be carried out under an appropriate title. The current Regulations however, do apply to activities that may occur without an instrument.
Environment plan assessment overview

NOPSEMA will conduct assessments according to Regulations 10 and 11 that require the regulator to make decisions on environment plans submitted against the criteria. As an independent regulator, NOPSEMA will also provide for a documented, consistent and systematic approach to the assessment of environment plans.

This assessment will be in accordance with specified procedures that meet the requirements of the legislation and are consistent with NOPSEMA guidance. The assessment will be undertaken by technically-competent teams using a targeted sampling process to test the plan against the acceptability criteria. A single point of contact will usually be nominated for each environment plan submission.

Guidance on key aspects of the environment plan assessment process

- **The titleholder** (also referred to as instrument holder in the Environment Regulations) is the registered person who holds the authority for carrying out a petroleum activity (e.g. via a permit or licence) and must ensure an operator is in place for all petroleum activities. They must notify NOPSEMA of the appointment of an operator prior to first submission and on any change of operator.

- **The operator** of an activity is the person responsible to the instrument holder for the overall management and operation of the activity. They are responsible for submitting the environment plan and complying with the environment plan in force.

- **Environment plan levies** will be imposed on submission to NOPSEMA of an environment plan or a proposed revision to an existing environment plan. NOPSEMA will publish guidance on the calculation and payment of the levies, which will be payable jointly and severally by the registered holder(s) of title(s) and is provided for in legislation to enable NOPSEMA to recover costs incurred in carrying out its regulatory functions. The calculation will account for the duration the activity extends and allow for the fact that more than one petroleum activity may be included in an environment plan.

- Within a **time limit** of 30 calendar days, the regulator must accept the environment plan, refuse to accept the environment plan or give notice that the regulator is unable to make a decision about the environment plan.

- NOPSEMA must accept the environment plan if there are reasonable grounds for believing that it meets the criteria outlined in the Environment Regulations, including that the environment plan:
  - is appropriate for the nature and scale of the activity
  - demonstrates that impacts and risks will be reduced to ALARP
  - demonstrates that impacts and risks will be of an acceptable level
  - provides performance objectives, standards and measurement criteria
  - includes an implementation strategy and monitoring, recording and reporting arrangements
  - demonstrates appropriate consultation
  - complies with the OPGGSA and Regulations.

- If NOPSEMA is unable to make a decision, then the operator must be notified and a proposed timetable for consideration of the plan must be set out. Should more information be required, the operator may provide this in the form of an amended plan, provided to NOPSEMA (i.e. not a re-submission). This process will be limited to a maximum of two iterations and NOPSEMA would then make a decision on whether to accept or refuse to accept the plan.

- If NOPSEMA is not reasonably satisfied that the environment plan meets the acceptance criteria when first submitted, the operator must be given a reasonable opportunity to modify and resubmit the plan. This is considered a submission under Regulation 10; a levy will be imposed and the 30-day time limit will then apply for the regulator to make a decision on the resubmitted plan.

- An **oil spill contingency plan** that is appropriate to the nature and scale of the petroleum activity is required as part of the environment plan and will be included in the environment plan assessment process. No separate approval process for OSCPs is required under the Regulations.
Environment plan documents and forms to be available for NOPSEMA commencement

<table>
<thead>
<tr>
<th>Topic</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOPSEMA assessment approach</td>
<td>Policy (amendments to existing)</td>
</tr>
<tr>
<td>Environment plan assessment</td>
<td>Policy</td>
</tr>
<tr>
<td>Notification / change of activity operator</td>
<td>Form</td>
</tr>
<tr>
<td>Change of activity operator details</td>
<td>Form</td>
</tr>
<tr>
<td>Environment plan submission</td>
<td>• Interim guidance</td>
</tr>
<tr>
<td></td>
<td>• Form</td>
</tr>
<tr>
<td>Environment plan levies</td>
<td>Guideline</td>
</tr>
<tr>
<td>Environment plan preparation</td>
<td>Interim guidance</td>
</tr>
<tr>
<td>Incident notification</td>
<td>• Interim guidance</td>
</tr>
<tr>
<td></td>
<td>• Form</td>
</tr>
</tbody>
</table>

Communications

Like NOPSA, NOPSEMA will continue to make information readily available to stakeholders on its website. In addition, the Authority’s online bi-monthly newsletter, The Regulator, distributed via email to subscribers, highlights developments in the regulation of offshore petroleum.

For queries, subscriptions to the newsletter, information on future stakeholder briefings, or to provide feedback, please email: communications@nopsa.gov.au, or from January 1, 2012 email: communications@nopsema.gov.au

Environment incident notifications and reports

Reportable incident notification

Regulation 26 requires an operator to notify a reportable incident as soon as practicable, and not later than two hours after the first occurrence, or the time the operator becomes aware of the incident.

From 1 January 2012 incidents should be reported to the

NOPSEMA notification phone line

(08) 6461 7090

The notification phone line is answered directly during office hours. Outside office hours, a recording service is in place, with an option to connect to the Duty Inspector for significant incidents or leave a message, which will be checked within 10 hours.

From 1 January 2012, incident reporting forms are available from nopsema.gov.au and must be emailed to submissions@nopsema.gov.au.

Reportable incident reports and recordable incident reports

Regulation 26A and 26B require that written notifications (reports of reportable incidents and recordable incidents) are submitted to the Authority. From 1 January 2012, send written reports to submissions@nopsema.gov.au.

Operators remain responsible for making notifications and other reports to other persons or organisations as may be required.