



Financial assurance requirements for petroleum titles

Table of contents

1.	Purpose	2
2.	Scope	2
3.	Relevant legislation	2
4.	Titleholder duties and requirements for financial assurance	2
5.	Demonstrating financial assurance in a form acceptable to NOPSEMA	3
5.1.	The APPEA Method for demonstrating financial assurance	3
6.	Validation and endorsement of models for demonstrating financial assurance.....	3
6.1.	What is validation?	3
6.2.	When is validation required?.....	4
6.3.	Agreeing the scope	4
6.4.	Submission timing	5
6.5.	Consideration of the documentation provided for a validation.....	5
7.	Ongoing compliance monitoring.....	5



1. Purpose

This policy documents NOPSEMA's systematic and consistent approach to becoming reasonably satisfied that a titleholder is compliant with section 571(2) of the OPGGS Act.

In particular, this relates to NOPSEMA's validation and endorsement of approaches for demonstrating financial assurance, and administrative approach for ensuring compliance with financial assurance as a prior condition for acceptance of an environment plan.

This policy should be read in conjunction with NOPSEMA's Environment Assessment Policy N-04750-PL1347.

2. Scope

This policy applies to all petroleum activities carried out in relation to any of the titles listed in section 571(1) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act).

3. Relevant legislation

Section 571 of the OPGGS Act

Regulation 5G of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations)

4. Titleholder duties and requirements for financial assurance

Titleholders have a duty under section 571 of the OPGGS Act to maintain sufficient financial assurance to meet costs, expenses and liabilities that may arise in connection with carrying out a petroleum activity or doing any other thing for the purposes of the petroleum activity; or complying with a requirement or legislative instrument under the OPGGS Act.

This includes the costs, expenses and liabilities arising in connection with complying with 'the polluter pays' principle established under section 572 of the Act in relation to a significant oil pollution incident, as well as coverage of debt due to the Commonwealth, NOPSEMA, a State or the Northern Territory in this regard.

Titleholders must also maintain sufficient financial assurance to meet obligations and duties established within the Act and relevant legislative instruments such as complying with directions, in accordance with section 586 of the OPGGS Act. These directions may relate to removal of property from a title area, plugging or closing off wells, the conservation and protection of natural resources in the title area, and remediation of damage to the seabed arising in connection with a petroleum activity.

The general duty described above is complemented by specific provisions in the Environment Regulations that require a demonstration of financial assurance as a prior condition for acceptance of an environment plan (EP).

Regulation 5G of the OPGGS(E) Regulations provides that NOPSEMA cannot accept an EP unless it is reasonably satisfied that the titleholder is compliant with the financial assurance obligations under the Act and compliance with these obligations is in a form that is acceptable to NOPSEMA.



5. Demonstrating financial assurance in a form acceptable to NOPSEMA

Typically, in determining whether the financial assurance held by a titleholder is satisfactory, NOPSEMA considers whether the titleholder has adequately quantified the costs, expenses and liabilities that may arise from a significant oil pollution incident associated with the petroleum activity.

To this end, NOPSEMA maintains a guideline to provide greater certainty on how titleholder(s) can demonstrate compliance with their duty under Section 571. Refer [Guideline 1381 - Financial assurance for petroleum titles](#).

The guideline provides for:

- Titleholders to apply an assurance process through which they can demonstrate compliance with s571 for titles relevant to the petroleum activities in the related EP
- Use of the APPEA method for demonstrating compliance (see 5.1 below)
- Ad hoc instances where the standing method cannot be used
- Independent validation and NOPSEMA endorsement of approaches for calculating financial assurance.

5.1. The APPEA Method for demonstrating financial assurance

The Australian Petroleum Production & Exploration Association (APPEA) has developed the “Method to assist titleholders in estimating appropriate levels of financial assurance for pollution incidents arising from petroleum activities” (the APPEA method) which provides a standard approach to quantifying the appropriate level of financial assurance under most normal circumstances to cover the potential costs, expenses and liabilities referred to in section 571 of the OPGGS Act.

If the APPEA method is used to determine the level of financial assurance required, a Financial Assurance Declaration supported by EP specific Financial Assurance Confirmations may be sufficient to allow NOPSEMA to be reasonably satisfied that the titleholder is compliant with the financial assurance duty.

A titleholders’ Financial Assurance Declaration is a form that is acceptable to NOPSEMA under Regulation 5G that assures the Regulator that the titleholder will maintain sufficient financial assurance for the life of the title.

A Financial Assurance Confirmation is an attestation by the titleholder when submitting each EP that valid declarations have been provided to NOPSEMA for the activities under all the titles to which the EP relates.

Further information regarding this process is provided in [Guideline 1381 - Financial assurance for petroleum titles](#).

6. Validation and endorsement of models for demonstrating financial assurance

6.1. What is validation?

Validation is an administrative construct to implement regulation 5G of the Environment Regulations. This regulation prevents NOPSEMA from accepting an EP unless it is reasonably satisfied that the titleholder is compliant with subsection 571(2) of the Act; and the compliance is in a form acceptable to NOPSEMA.

Validation is a process undertaken by an independent competent party, namely the Validator, to provide assurance to NOPSEMA that the model employed for calculating financial assurance is sufficiently robust and provides representative coverage of activity types, risks and geographic locations to support relevant boundaries/limits set.



Specifically, it is a statement in writing by the Validator in respect to the appropriateness of the model employed for calculating financial assurance for an activity, to the extent required by the scope of validation agreed between NOPSEMA and the titleholder.

It should be noted that titleholders may utilise any competent validator and NOPSEMA does not prescribe in this area.

6.2. When is validation required?

Where costs, expenses and liabilities are calculated in a way other than one previously determined to be in a form that is acceptable to NOPSEMA, the different approach must be independently validated and endorsed in order to satisfy NOPSEMA that the duty has been met. Titleholders should engage NOPSEMA early in such circumstances.

NOPSEMA will request a validation in respect to all new approaches for calculating sufficient financial assurance, including bottom up costing approaches for individual activities that exceed limits set in existing endorsed methods.

The approach is required to consider suitable reviews and re-validation periods and approaches in order to address changes that may have occurred over time. Re-validation of methodologies may also be requested in relation to specific circumstances which affect the ongoing validity of the methodology.

If the potential environmental consequences of an incident associated with a petroleum activity are considered by NOPSEMA to be unusually high, NOPSEMA may, at its discretion, require the titleholder to fully calculate costs, expenses and liabilities in relation to that incident rather than applying the APPEA method, and these will require independent validation and endorsement.

6.3. Agreeing the scope

Prior to NOPSEMA agreeing the scope of validation the following should be considered:

- It is expected that the scope of validation contains an overview of the proposed methodology of the validation and sets out a systematic process for evaluating the financial assurance methodology put forward;
- Demonstration of validator selection process, evidence of their independence and competence and that they will have free access to data;
- The scope of validation should contain provision for the validator to assess the appropriateness of the model developed for calculating financial assurance;
- In particular, it is expected that the scope of the validation establishes to a reasonable level of assurance, that the model is sufficiently robust and provides representative coverage of activity types, risks and geographic locations to support relevant boundaries/limits set; and
- It is expected that clearly defined deliverables are identified, including
 - A detailed validation report for the titleholder to hold on record for the life of the EP
 - A concise validation statement for NOPSEMA's review and endorsement of the model -as being a form acceptable to NOPSEMA to satisfy the requirements of OPGGS(E)R 5G(2)(b).

When a scope of validation is agreed, NOPSEMA shall confirm this in writing.



6.4. Submission timing

NOPSEMA will commence EP assessments prior to receiving demonstrations of compliance with Regulation 5G. However, NOPSEMA must not accept an EP, or a proposed revision of an EP, unless NOPSEMA is reasonably satisfied that the titleholder is compliant with section 571(2) of the OPGGS Act and that the compliance is in a form acceptable to NOPSEMA.

Therefore, where a validation is required, the titleholder should consider the timeframe required for undertaking this work and the impact this may have on EP assessment timeframes.

6.5. Consideration of the documentation provided for a validation

The titleholder must assess whether the person(s) undertaking the validation (the Validators) are both sufficiently competent and independent. The titleholder must then provide sufficient documented information to provide a reasonable level of assurance to NOPSEMA that the above requirements have been met.

In considering the appropriateness of the Validator(s) in respect of competence, ability and access to data, NOPSEMA shall consider the documentation provided by the operator that addresses both the processes employed by the operator to establish the appropriateness of the Validator(s) and the outputs of these processes.

In its decision to endorse a particular validation, NOPSEMA will also consider the extent to which the validation statement matches the agreed scope of validation and thereby provides reasonable assurance that the model employed for calculating financial assurance is sufficiently robust.

NOPSEMA endorsement confirms that future demonstrations of compliance with Regulation 5G using the endorsed model and associated declaration/confirmation will be considered 'a form that is acceptable to NOPSEMA'.

7. Ongoing compliance monitoring

Regardless of any declarations provided to NOPSEMA, the requirement for compliance with the duty to maintain sufficient financial assurance for the life of the title rests with the titleholder.

NOPSEMA has legislated functions to develop and implement strategies to monitor and enforce compliance with environmental management law (section 646 (gk) of the OPGGS Act). As such, NOPSEMA will inspect compliance with the duty by checking that titleholders are implementing processes to maintain financial assurance throughout the life of the activity in accordance with the legislative requirements.

Failure to maintain compliance, in a form acceptable to NOPSEMA, is grounds for the withdrawal of acceptance of an environment plan for the activity.