

# Regulatory compliance monitoring, enforcement and intervention for offshore oil pollution incidents

Document No: N-00500-PL1922

Date: 07/09/2020

## 1. Purpose and scope

The policy describes the duties of petroleum titleholders in relation to oil pollution, the suite of compliance monitoring, enforcement and intervention powers available to NOPSEMA during an oil pollution incident, and the extension of those powers in the event of a **declared oil pollution emergency** that originates in Commonwealth waters.

The policy is not intended to cover all aspects of NOPSEMA's compliance monitoring, enforcement and intervention activities under NOPSEMA's Compliance Strategy but rather focusses on those elements that will be exercised in response to an oil pollution incident and describes how the declaration of an oil pollution emergency affects the exercise of those powers.

## 2. Petroleum titleholder duties

Section 569 of the *Offshore Petroleum Greenhouse Gas Storage Act 2006* (OPGGs Act) places obligations on petroleum titleholders to control the flow and prevent the escape of petroleum within their title area. Section 572C of the OPGGS Act places duties on petroleum titleholders in the event of an escape of petroleum as a result of, or in connection with their activities as follows;

### Section 572C, OPGGS Act

- (2) The registered holder of the title must:
- (a) in an offshore area, in accordance with the environment plan for the petroleum activity:
    - (i) as soon as possible after becoming aware of the escape of petroleum, take all reasonably practicable steps to eliminate or control it; and
    - (ii) clean up the escaped petroleum and remediate any resulting damage to the environment; and
    - (iii) carry out environmental monitoring of the impact of the escape on the environment; and
  - (b) if any of the escaped petroleum has migrated to land or waters of a state or the Northern Territory—on that land or in those waters, as the case may be, in accordance with the environment plan for the petroleum activity:
    - (i) clean up the escaped petroleum and remediate any resulting damage to the environment; and
    - (ii) carry out environmental monitoring of the impact of the escape on the environment; and
  - (c) If any of the escaped petroleum has migrated to land or waters of a designated external Territory—on that land or in those waters, as the case maybe, in accordance with the environment plan for the petroleum activity:
    - (i) clean up the escaped petroleum and remediate any resulting damage to the environment; and
    - (ii) carry out environmental monitoring of the impact of the escape on the environment.

Petroleum titleholders are required to maintain compliance with these obligations at all times. Where NOPSEMA considers that a petroleum titleholder has failed to comply with obligations under section 572C, NOPSEMA may do any or all of the things that it considers the petroleum titleholder has failed to do to comply with their obligations. Any costs incurred by NOPSEMA as a result of a petroleum titleholders' failure to comply with their obligations become a debt due to NOPSEMA by the petroleum titleholder.

Permissioning documents are required to demonstrate that petroleum titleholders have adequately considered the risks associated with their activities, including those relating to preventing and responding to the escape of petroleum in compliance with obligations under section 572C.

### **3. Oil pollution incidents**

NOPSEMA considers an oil pollution incident to be an event or circumstance that has or may lead to an escape of petroleum which arises as a result of, or in connection with, a petroleum activity of a Commonwealth petroleum titleholder.

Oil pollution incidents can vary in nature and scale and may or may not be reportable to NOPSEMA as an incident under the requirements of the OPGGS Act and subordinate regulations. Obligations to report incidents, accidents and dangerous occurrences to NOPSEMA apply to duty holders under the OPGGS Act including petroleum titleholders and operators of facilities. In all cases duty holders with obligations to report incidents must do so in accordance with the relevant regulatory requirements.

Where NOPSEMA has information that an oil pollution incident may have occurred NOPSEMA will make inquiries and where appropriate may undertake inspections and investigations to establish the details of the incident. NOPSEMA has a range of general powers to monitor and enforce compliance that may be utilised in the event of an oil pollution incident and which are described in section 4.

NOPSEMA is able to extend its compliance monitoring, enforcement and intervention powers to additional geographic areas and premises where NOPSEMA considers that the nature and scale of an oil pollution incident makes it necessary to do so. The process and considerations involved in the extension of powers are detailed in section 5.

### **4. NOPSEMA's general compliance monitoring, enforcement and intervention powers in oil pollution incidents**

NOPSEMA inspectors are provided with a broad suite of powers to monitor and enforce compliance with the requirements of the OPGGS Act and subordinate regulations and, where necessary, to intervene in order to protect the safety of people or the environment. These compliance monitoring and enforcement powers may be utilised when implementing a regulatory response to an oil pollution incident.

## 4.1. Compliance monitoring and enforcement

In general terms, to undertake compliance monitoring and enforcement activities, NOPSEMA inspectors have powers<sup>1</sup> to;

- enter and search premises without warrant;
- require questions to be answered and for information, documents and things to be provided;
- take possession of equipment and samples; and
- issue do not disturb, improvement and prohibition notices.

Persons subject to the OPGGS Act must provide reasonable facilities and assistance to a NOPSEMA inspector exercising these powers and must not obstruct or hinder a NOPSEMA inspector in the performance of their duties.

Where NOPSEMA considers that a more detailed investigation is required, further powers to search for and seize evidential material are provided to NOPSEMA inspectors under the *Regulatory Powers (Standard Provisions) Act 2014*.

Dependent on the nature and scale of an offshore petroleum incident, emergency response arrangements detailed under relevant regulatory documents may require activation.

These may include:

- **oil pollution emergency provisions** under an **environment plan** and associated oil pollution emergency plan
- measures and arrangements to regain control of any well under a **well operations management plan** if there is a loss of well integrity
- arrangements for emergency response under a **safety case** for any relevant facilities.

During an oil pollution incident, compliance with emergency response arrangements may be monitored and enforced by NOPSEMA wherever these arrangements are being implemented.

## 4.2. Intervention

Part 6.2 of the OPGGS Act provides NOPSEMA with the power to issue directions in relation to petroleum operations regulated under the OPGGS Act.

Where NOPSEMA considers it necessary to intervene during an oil pollution incident to protect the safety of people or the environment, NOPSEMA may direct a petroleum titleholder to take or cease to take certain actions in response to the oil pollution incident.

---

<sup>1</sup> Powers of NOPSEMA inspectors are detailed in parts 6.5, 7.1 and schedules 2A, 2B and 3 of the OPGGS Act.

Directions under section 574 of the OPGGS Act can require titleholders to take action on any matter in relation to which regulations under the OPGGS Act may be made. This includes any action to respond adequately to an oil pollution incident. Directions under section 574 may also be extended to a **specified class of persons**, such as facility operators or contracted service providers, if required.

In addition, and of particular relevance to oil pollution incidents, NOPSEMA may issue a **significant incident direction** to a titleholder under section 576B of the OPGGS Act to take any actions required to prevent and eliminate any escape of petroleum and to mitigate, manage and remediate the effects of any escape of petroleum. Actions under these directions may be required anywhere in an offshore area whether within or outside a title area.

NOPSEMA will issue a significant incident direction under section 576B wherever it is considered necessary to intervene to secure the compliance of a petroleum titleholder with emergency response arrangements, or to ensure compliance with obligations under section 572C. In the event that a petroleum titleholder fails to comply with a direction then NOPSEMA may do any or all of the things required under the direction to be done. Any costs or expenses incurred by NOPSEMA in relation to a direction become a debt due to the Commonwealth by the petroleum titleholder.

Further detail on how NOPSEMA exercises its powers to undertake compliance monitoring and enforcement actions, other than in an oil pollution incident, is provided in relevant inspection, investigation and enforcement policies under NOPSEMA's Compliance Strategy and these matters are not discussed further in this policy.

## 5. Oil pollution emergencies

In some circumstances, including where actions in response to an oil pollution incident are required to be undertaken on, in or above the land or waters of a State or Territory, NOPSEMA's CEO may declare an oil pollution emergency.

Clause 2A of schedule 2A of the OPGGS Act provides extended application of a suite of compliance monitoring and enforcement powers for NOPSEMA inspectors to locations and premises outside Commonwealth waters during a declared oil pollution emergency.

#### Schedule 2A Clause 2A

(1) If the CEO is satisfied that:

- (a) there is an emergency that has resulted in, or may result in, oil pollution; and
- (b) the emergency is attributable to one or more petroleum activities of a petroleum titleholder; and
- (c) either:
  - (i) there is a single environment plan that is, or may be, relevant to the emergency; or
  - (ii) there are two or more environment plans that are, or may be relevant to the emergency;

the CEO may, by writing, declare:

- (d) that there is a declared oil pollution emergency for the purposes of this Schedule; and
- (e) if subparagraph (c)(i) applies—that the environment plan is a declared environment plan for the purposes of this Schedule; and
- (f) if subparagraph (c)(ii) applies—that each of those environment plans is a declared environment plan for the purposes of this Schedule.

### 5.1. Extended application of powers in an oil pollution emergency

The general compliance monitoring, enforcement and intervention powers of NOPSEMA operate at all times and any of these powers may be utilised in the event of an oil pollution incident to monitor and enforce compliance with duties, obligations and requirements under the OPGGS Act.

Further to the general powers, in the event that the NOPSEMA CEO declares an oil pollution emergency, NOPSEMA inspectors may conduct **oil pollution environmental inspections** and exercise compliance monitoring and enforcement powers under schedule 2A of the OPGGS Act in the coastal waters of a State or Territory or on, in or above the land or waters of a State or Territory during those inspections.

During an oil pollution environmental inspection, NOPSEMA inspectors are provided with powers for warrant free access to any premises if the premises are being, or are proposed to be, used for the implementation of the oil pollution emergency provisions of an environment plan. This includes any premises where planning, directing, coordinating, or providing logistical support for the implementation of the oil pollution emergency provisions of an environment plan is being undertaken. The OPGGS Act further provides that aircraft and vessels are premises subject to these powers where being used or proposed to be used to implement the oil pollution emergency response provisions of a **declared environment plan**, or to comply with a significant incident direction.

A premises need not be a physical structure or building and may include staging areas, forward operating locations and shorelines or any other location where emergency response operations are occurring.

During a declared oil pollution emergency, NOPSEMA may issue significant incident directions to petroleum titleholders under section 576B of the OPGGS Act requiring them to take actions anywhere in Commonwealth waters and/or within the land and waters of a State or Territory.

NOPSEMA can only require a petroleum titleholder to take an action or cease to take an action on or in the

land or waters of a State or Territory if NOPSEMA has consulted with the **designated public official** of the State or Territory. The consultation must occur before the significant incident direction is issued.

## 5.2. Declaring an oil pollution emergency

Prior to declaring an oil pollution emergency, NOPSEMA's CEO must be satisfied that the conditions of schedule 2A, clause 2A have been met.

To inform a decision to declare an oil pollution emergency, the CEO will consider on the basis of available information, whether;

- oil pollution has occurred or there is a credible threat that oil pollution will occur
- there are reasonable grounds to believe that oil pollution has resulted or may result from the petroleum activities of a petroleum titleholder including the proximity of any observed oil to offshore petroleum infrastructure and facilities.

Where NOPSEMA's CEO is satisfied there is an oil pollution incident attributable to a Commonwealth petroleum titleholder's petroleum activity the following factors may be taken into account in considering whether to declare an oil pollution emergency;

- whether there is, or may be, a need to conduct schedule 2A compliance monitoring or enforcement activities at premises or in locations not normally accessible under those powers, or where general compliance monitoring powers do not provide timely access
- whether there is, or may be, a need to issue a direction under section 576B of the OPGGS Act to require a petroleum titleholder to take or cease to take actions on, in or above the land or waters of a State or Territory
- the outcomes of consultation with any potentially affected State or Territory including where a State or Northern Territory Government requests that NOPSEMA declare an oil pollution emergency and NOPSEMA agrees that it is necessary to do so
- the nature and scale of the oil pollution incident
- the location of the oil pollution incident and its proximity to the coastal waters or land of a State or Territory
- the current extent and predicted trajectory of any oil pollution incident and the time predicted for any spill to enter State or Territory waters
- information from any environment plan that may be relevant to an incident
- any oil pollution response actions being undertaken, or not being undertaken but considered by NOPSEMA to be required, by the relevant petroleum titleholder;
- the potential duration of an oil pollution incident and response
- potential impacts on Matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 1999* and socio-economic receptors
- the oil pollution incident classification as defined under the [National Plan for Maritime Environmental Emergencies](#).

### 5.2.1. Making a declaration

In the event NOPSEMA's CEO declares an oil pollution emergency, the declaration must be in writing and published on NOPSEMA's website as soon as practicable. A copy of any declaration will be provided to **relevant parties** as identified in schedule 2A of the OPGGS Act.

### 5.2.2. Identifying declared environment plans

In order for NOPSEMA's CEO to declare an oil pollution emergency, there must be an environment plan or environment plans that are or may be relevant to the emergency. Any environment plan identified in a declaration becomes a declared environment plan for the duration of the oil pollution emergency. The oil pollution emergency provisions contained within the declared environment plan become subject to compliance monitoring and enforcement by NOPSEMA under schedule 2A wherever the emergency provisions are being implemented. The oil pollution emergency provisions of an environment plan are any provisions within the environment plan or associated oil pollution emergency plan that relate to an oil pollution emergency.

In determining which environment plan(s) are, or may be relevant to an oil pollution emergency NOPSEMA's CEO may take into account;

- the relevant Commonwealth title or titles in which the emergency has originated and the holders of those titles
- the relevant in force environment plans for activities in the title or titles and the activities to which those environment plans relate
- the suitability of oil pollution emergency provisions contained within relevant environment plans in the context of available information on an oil pollution emergency.

### 5.2.3. Consultation and engagement

Oil pollution emergencies are significant events that require collaboration and coordination across multiple parties and agencies. Established coordination and consultation arrangements between State, Northern Territory and Commonwealth agencies under the [National Plan for Maritime Environmental Emergencies](#) will be used wherever practicable to facilitate engagement between NOPSEMA and relevant government agencies. NOPSEMA will seek to engage with potentially affected parties either through established mechanisms or directly prior to, during, and at the conclusion of an oil pollution emergency and in all cases where required to under the OPGGS Act.

Wherever practicable NOPSEMA will seek to engage with potentially affected parties at the following points in an oil pollution emergency:

- prior to declaring an oil pollution emergency
- prior to issuing a significant incident direction in relation to an oil pollution emergency
- prior to revoking an oil pollution emergency declaration.

In all cases NOPSEMA must consult with designated public officials of a State or Territory prior to issuing a significant incident direction under section 576B that relates to the land or waters of the State or Territory.

In any significant oil pollution incident NOPSEMA will engage with other relevant Australian Government Agencies under the established Australian Government Crisis Coordination Framework. This framework will be utilised to ensure that Government maintains situational awareness during a significant oil pollution incident. Under the OPGGS Act, NOPSEMA is able to intervene on behalf of the Australian Government to require or undertake actions in response to an oil pollution incident.

#### 5.2.4. Revoking an oil pollution emergency declaration

If NOPSEMA's CEO is satisfied that an oil pollution emergency no longer exists, the CEO must revoke the oil pollution emergency declaration in writing. The factors that may be taken into account by NOPSEMA in deciding if an oil pollution emergency no longer exists include whether:

- the source of any oil pollution incident has been controlled and there is no longer a threat of continuing oil pollution from the source
- emergency response actions under any declared environment plan have been completed
- any significant incident direction issued during an oil pollution emergency has been complied with or is otherwise closed by NOPSEMA
- the designated public official of any affected State or Territory has been consulted and informed that a declaration is to be revoked
- the **spill response control agency** has decided to terminate response operations
- the process of transition from the response to recovery phases of the emergency has been determined and/or commenced.

Where a declaration of an oil pollution emergency is revoked, NOPSEMA will publish a notice of revocation to its website as soon as practicable.

## Glossary of terms

**Commonwealth waters** – For the purposes of this policy, Commonwealth waters includes the offshore areas of the States and Territories as defined under section 8 of the OPGGS Act.

**Declared environment plan** – Has the meaning given by schedule 2A, clause 2A of the OPGGS Act.

**Declared oil pollution emergency** – Has the meaning given by schedule 2A, clause 2A of the OPGGS Act.

**Designated public official** – Designated public officials of a State or Territory are defined under section 33A of the OPGGS Act and are ordinarily an agency head of a relevant department of the State or Northern Territory or a Commonwealth official with responsibilities for administration of laws relating to external Territories.

**Environment plan** – Means the document known as an environment plan that is submitted to the Regulator under regulation 9 of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009.

**Oil pollution emergency provisions** – Any provisions of an oil pollution emergency plan contained in the environment plan; or any other provisions of the environment plan that relate to an emergency that has resulted in, or may result in oil pollution.



**Oil pollution environmental inspection** – An inspection conducted during a declared oil pollution emergency to determine whether oil pollution emergency provisions of a declared environment plan have been, or are being, complied with and/or whether a significant incident direction has been, or is being, complied with.

**Oil pollution incident** – An event or circumstance that has or may lead to an escape of petroleum which arises as a result of, or in connection with, a petroleum activity of a Commonwealth petroleum titleholder.

**Relevant parties** – In accordance with schedule 2A of the OPGGS Act, relevant parties include the Secretary of the Department with administrative responsibility for the OPGGS Act and the designated public official of the relevant State or Territory.

**Safety case** – Means the document known as the safety case that is submitted to NOPSEMA under part 2 of chapter 2 of the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009.

**Specified class of persons** – Section 574 of the OPGGS Act describes the specified class of persons to whom application of a General Direction under that part may be extended.

**Significant incident direction** – Means a direction under section 576B of the OPGGS Act.

**Spill response control agency** – Means the agency or company assigned by legislation, administrative arrangements or within the relevant contingency plan, to control response activities for a maritime environmental emergency.

**Well operations management plan** – Means the document known as the well operations management plan that is required for well activities in accordance with regulation 5.04 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011.

## 6. Related documents

N-00000-PL1696 – Compliance strategy

N-02000-PL1523 – Inspection

N-03000-PL-1697 – Investigation

N-05000-PL00067 – Enforcement