

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 122

Offshore Petroleum and Greenhouse Gas Storage Act 2006
Offshore Petroleum (Safety) Amendment Regulations 2010 (No. 1)

Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003
Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2010 (No. 1)

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

GENERAL OUTLINE

The Regulations are made in accordance with section 781 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Offshore Act) and Section 11 of the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003* (the Levies Act).

The purpose of the amendments to the *Offshore Petroleum (Safety) Regulations 2009* (the Principal Safety Regulations) and the *Offshore Petroleum and Greenhouse Gas (Safety Levies) Regulations 2004* (the Principal Safety Levies Regulations) are to enable the National Offshore Petroleum Safety Authority (NOPSA) to provide regulatory services relating to greenhouse gas activities and access safety cases for proposed facilities that utilise new technologies.

The Principal Safety Regulations are amended to incorporate all greenhouse gas related activities thereby making them dual-purpose. Facilities and processes used in the recovery, preliminary processing and transporting of petroleum are very much the same as those that will be used in the transporting, offshore processing and injection of greenhouse gas substances. The objective and non-prescriptive nature of the Offshore Act and these amendments enable the Principal Safety Regulations to address the risk factors of activities in accordance with best practice and provide for continuous improvement. The Principal Safety Regulations are also amended to enable NOPSA to engage with an operator early in the safety case development process for projects employing new technologies for a facility.

Details set out in **Attachment A**.

The Principal Safety Levies Regulations are amended to allow NOPSA to work with a company that is planning to use new technology in a new project from the beginning of the design process of the facility. Previously this was not possible because the definition of a proposed facility assumed that construction for the project had already begun; and therefore the regulator, which operates on a cost-recovery basis, had no regulatory mechanism to recoup its costs for assessing such a project. This voluntary early engagement for new technology projects will allow companies to begin addressing the safety regulation approval processes earlier, while still maintaining the integrity of the overarching 'safety case' regime under the Offshore Act.

Details set out in **Attachment B**.

CONSULTATION

The suite of greenhouse gas storage regulations have been the subject of vast consultations and numerous workshops with stakeholders, including other Australian Government agencies, State and Territory governments, the potential storage industry, the petroleum industry, environmental NGOs and interested individuals over an extended period of time from November 2008 to October 2009. The process commenced with the release of discussion papers which described the proposed overall regulatory structure (including dual purpose and petroleum-like regulations). Consultations with the stakeholder group is an ongoing process with the latest being on 3 March 2010.

The Levies Amendment Regulations are technical in nature and designed to clarify existing policy intent. NOPSA, the authority responsible for operation activities in relation to regulation under the offshore regulatory regime, identified the need for amendment and communicated this need with the Department. The Department then consulted closely with NOPSA in developing these regulations to ensure that the amendments met both policy intent and operational requirements. Consultation included several face-to-face meetings and teleconferences. NOPSA also commented on both sets of Amendment Regulations during the drafting process.

FINANCIAL IMPACT STATEMENT

These amendments do not have any financial impact on the Australian Government budget.

REGULATORY IMPACT STATEMENT

These amendments do not pose new regulatory burden on the petroleum or greenhouse gas storage industries.

ATTACHMENT A

SAFETY AMENDMENT REGULATIONS - NOTES ON INDIVIDUAL CLAUSES

Regulation 1: Name of Regulations

Regulation 1 provides for the title of the Regulations to be the *Offshore Petroleum (Safety) Amendment Regulations 2010 (No. 1)*.

Regulation 2: Commencement

The Regulations commence on the day following registration on the Federal Register of Legislative Instruments.

Regulation 3: Amendment of *Offshore Petroleum (Safety) Regulations 2009*

Regulation 3 provides that the *Offshore Petroleum (Safety) Regulations 2009* (the Principal Regulations) are amended as set out in Schedule 1 to the Regulations.

Schedule 1 - Amendments

Item 1: Regulation 1.1, name of Regulations

Item 1 changes the name of the Principal Regulations to reflect the inclusion of coverage for greenhouse gas storage activities. The Regulation is now called the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*.

Items 2: Subregulations 1.4(1), (2) and (3)

Item 2 removes the reference to 'offshore petroleum' from subregulations 1.4(1), 1.4(2) and 1.4(3) of the Principal Regulations. This is to ensure that facilities and safety cases are expanded to cover both petroleum and greenhouse gas storage activities.

Item 3: Subregulation 1.5(1), definition of *diving operation*

Item 3 expands the definition of 'diving operation' in the Principal Regulations to include coverage for a greenhouse gas storage operation.

Item 4: Subregulation 1.5(1), definition of *facility*,

Item 4 substitutes the definition of 'facility' in the Principal Regulations, as it is clearly defined in Schedule 3 to the Offshore Act. This is to avoid confusion and ensure consistency between the Principal Regulations and the Offshore Act.

Item 5: Subregulation 1.5(1), after definition of *member of the workforce*

Item 5 adds a new definition 'offshore greenhouse storage operations' to the Principal Regulations and refers the reader to section 643 of the Offshore Act. This term corresponds to the term 'offshore petroleum operations', which is a main delineator of the scope of the National Offshore Petroleum Safety Authority's responsibilities.

2.

Item 6: Subregulation 1.5(1), definition of *operator*

Item 6 substitutes the current definition of ‘operator’ in the Principal Regulations and refers the reader to the definition of ‘operator’ in Schedule 3 to the Offshore Act. This is to avoid confusion and ensure consistency between the Principal Regulations and the Offshore Act.

Item 7: Subregulation 1.5(1), definition of *pipe*, paragraph (a)

Item 7 amends the definition of ‘pipe’ to include ‘or a greenhouse gas substance’ in the Principal Regulations to ensure that it is clear that a pipe may carry either petroleum or greenhouse gas substances.

Item 8: Subregulation 1.5(1), definition of *pipe*, subparagraph (b)(i)

Item 8 amends the definition of ‘*pipe*’ in the Principal Regulations to include greenhouse gas pipeline. The purpose is to ensure consideration in a safety case of the risks associated with all pipes that may carry a greenhouse gas substance.

Item 9: Subregulation 1.5(1), definition of *titleholder*

Item 9 substitutes the definition of ‘titleholder’ in the Principal Regulations to incorporate coverage for both petroleum and greenhouse gas titles consistent with subsection 572(1) of the Offshore Act.

Item 10: Regulation 1.6, table, item 11

Item 10 deletes the reference to ‘petroleum’ to ensure that it is clear that coverage is for both petroleum and greenhouse gas activities.

Item 11: Regulation 1.7(1), table, item 8

Item 11 deletes the reference to ‘petroleum’ to ensure that it is clear that coverage is for both petroleum and greenhouse gas activities.

Item 12: Regulation 2.2

Item 12 removes regulation 2.2 (Nomination of operator – shared petroleum facility) from the Principal Regulations because it is unnecessary. It is clear in clause 5 of Schedule 3 of the Offshore Act that there can only be one operator of a facility.

Item 13: Subregulation 2.3(1)

Item 13 omits the phrase with ‘an operator’ from the Principal Regulations and inserts the phrase ‘the operator’. This is to clarify the policy intent that there can only be one operator of a facility as outlined in item 12 above.

3.

Item 14: Subregulation 2.3(2)

Item 14 removes subregulation 2.3(2) from the Principal Regulations because it is not required. The amendment to subregulation 2.3(1) clarifies that there can be only one operator per facility, making subregulation 2.3(2) redundant.

Item 15: Subregulation 2.3(3)

Item 15 recasts subregulation 2.3(3) in the Principal Regulations for improved clarity. The intent of the subregulation remains unchanged.

Item 16: Subregulations 2.4(1) and (2)

Item 16 deletes the references to ‘registered’ because the definition in the Offshore Act means a person who is registered by the Safety Authority is the operator of the facility.

Item 17: Paragraph 2.4(4)(a)

Item 17 inserts the phrase ‘management and’ into paragraph 2.4(4)(a) of the Principal Regulations. This is to remedy an unintended omission of these words from the existing provision.

Item 18: Subparagraph 2.17(2)(d)(iii)

Item 18 removes subparagraph 2.17(2)(d)(iii) ‘leaks or escapes of greenhouse gas’ from the Principal Regulations. This reflects the fact that methane and any other hydrocarbons that are greenhouse gases (apart from carbon dioxide which is the only prescribed greenhouse gas substance under the Offshore Act) are ‘petroleum’ as defined in the Offshore Act and as such will be covered by subparagraph 2.17(d)(ii).

Item 19: Subregulation 2.24(1)

Item 19 omits the phrase ‘the facility’ from subregulation 2.24(1) of the Principal Regulations and inserts the phrase ‘a facility’. This is a technical amendment to fix the incorrect reference to ‘the facility’ when ‘a facility’ has not already been mentioned.

Item 20: After Subregulation 2.24(4)

Item 20 adds new subregulations 2.24(5) and (6). Subregulation 2.24(5) provides that a safety case for a proposed facility may be submitted without an agreed scope of validation. Subregulation 2.45(6) provides that NOPSAs may at any time then require that, in order to continue assessment of the safety case, the operator and NOPSAs must agree on the scope of validation for the proposed facility.

The reason for this amendment is that for a proposed facility in the early stages of facility design or development, it would be both onerous and impractical to require that the operator agree to a scope of validation before submitting a safety case to NOPSAs. Furthermore, NOPSAs would not have adequate information to be able to agree to a scope of validation at such an early stage. The new subregulations therefore allow the operator

to submit to NOPSAs an early stage safety case for such a proposed facility without having agreed a scope of validation.

Item 21: Regulation 2.43, heading

Item 21 amends the heading to regulation 2.43 (Facility must have registered operator) of the Principal Regulations by omitting the word ‘registered’. This reflects the fact that the term ‘registered operator’ in the heading is used inappropriately because the definition of operator in the Offshore Act means a person who is registered by the Safety Authority as the operator of the facility.

Item 22: Subregulation 2.43(1)

Item 22 is a drafting consistency amendment due to the omission of subregulation 2.43(2) outlined in item 24 below.

Item 23: Paragraphs 2.43(1)(a), (b), (c), (d), (e) and (f)

Item 23 inserts the phrase ‘or part of the facility’ after each mention of ‘facility’. This is necessary so that subregulation 2.43(2) can be deleted by item 24 without changing the meaning of the offence in subregulation 2.43(1).

Item 24: Subregulation 2.43(2)

Item 24 omits subregulation 2.43(2) from the Principal Regulations to correct a possible interpretation of the subregulation which could suggest, incorrectly, that there can be more than one operator for a facility.

Item 25: Subregulation 2.44(1)

Item 25 is a drafting consistency amendment due to the omission of subregulation 2.44(2).

Item 26: Paragraphs 2.44(1)(a), (b), (c), (d), (e) and (f)

Item 26 inserts the phrase ‘or part of the facility’ after each mention of ‘facility’ in the Principal Regulations. This is necessary so that subregulation 2.44(2) can be deleted by item 27 without changing the meaning of the offence in subregulation 2.44(1).

Item 27: Subregulation 2.44(2)

Item 27 omits subregulation 2.44(2) from the Principal Regulations to correct a possible interpretation of the subregulation which could suggest, incorrectly, that there can be more than one operator for a facility.

Item 28: Paragraphs 2.45(1)(a), (b), (c), (d), (e) and (f)

Item 28 inserts the phrase ‘or part of the facility’ after each mention of ‘facility’ into paragraphs 2.45(1)(a) to (f) of the Principal Regulations. This is necessary so that subregulation 2.45(2) can be deleted by item 29 without changing the meaning of the offence in subregulation 2.45(1).

Item 29 Subregulation 2.45(2)

Item 29 omits subregulation 2.45(2) from the Principal Regulations to correct a possible interpretation of the subregulation which could suggest, incorrectly, that there can be more than one operator for a facility.

Item 30: Subregulations 2.45(3) and (4)

Item 30 amends subregulations 2.45(3) and 2.45(4) by renumbering them as subregulations 2.45(2) and 2.45(3). This is a consequential amendment to reflect the omission of subregulation 2.45(2) by item 29 above.

Item 31: Paragraphs 2.46(1)(a), (b), (c), (d), (e) and (f)

Item 31 inserts the phrase ‘or part of the facility’ after each mention of ‘facility’ into paragraphs 2.46(1)(a) to (f) of the Principal Regulations. This is necessary so that subregulation 2.46(2) can be deleted by item 32 without changing the meaning of the offence in subregulation 2.46(1).

Item 32: Subregulation 2.46(2)

Item 32 omits subregulation 2.46(2) from the Principal Regulations to correct a possible interpretation of the subregulation which could suggest, incorrectly, that there can be more than one operator for a facility.

Item 33: Subregulation 2.46(3)

Item 33 amends subregulation 2.46(3) by renumbering as subregulation 2.46(2). This is a consequential amendment to reflect the omission of subregulation 2.46(2) by item 32 above.

Item 34: Subregulation 4.22(3)

Item 33 amends subregulation 4.22(3) to remove an inappropriate application of strict liability. The subregulation confines the strict liability fault element to the circumstance in paragraph 4.22(2)(a) that the person is not qualified as a supervisor under the Australian Diver Accreditation Scheme (ADAS). This offence provision is now consistent with other offence provisions in the Principal Regulations.

Item 35: Further Amendments

The further amendments are machinery in nature and replace or delete the current references to petroleum with the appropriate reference that includes both petroleum and greenhouse gas activities as follows:

Regulation 1.6 table item 10

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Subregulation 1.7(1), table, item 7

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Subparagraph 2.5(1)(d)(ii)

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Subparagraph 2.21(1)

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Paragraph 2.30(1)(e)

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Subregulation 2.41(2), table item 9

The amendment replaces the reference to ‘petroleum’ with ‘petroleum or greenhouse gas substance’.

Schedule 3.1 – Forms 1 to 5

The amendments replace all references to the ‘*Offshore Petroleum (Safety) Regulations 2009*’ with references to the renamed ‘*Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*’.

Schedule 3.2 – Part 3, note

The amendment replaces the reference to ‘offshore petroleum operations’ with ‘offshore petroleum operations or offshore greenhouse gas operations’.

SAFETY LEVIES AMENDMENT REGULATIONS – NOTES ON INDIVIDUAL CLAUSES

Regulation 1: Name of Regulations

Regulation 1 provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2010 (No. 1)*.

Regulation 2: Commencement

The Regulations commence on the day following registration on the Federal Register of Legislative Instruments.

Regulation 3: Amendment of *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004*

Regulation 3 provides that the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004* are amended as per Schedule 1 to the Regulations.

Schedule 1 - Amendments

Item 1: Regulation 36

Item 1 substitutes the existing regulation 36 with a new regulation 36 to clarify the policy intent that, if an operator submits a safety case for a proposed facility, a fee is payable to the National Offshore Petroleum Safety Authority (NOPSA – Safety Authority) by the operator of the proposed facility for assessment of that safety case.

The regulation amends the definition of ‘proposed facility’ to include a proposed facility that is ‘proposed to be constructed’ as well as a proposed facility that is ‘being constructed’ at a place outside Safety Authority waters, and is proposed to be installed and operated at a site in Commonwealth waters or in the designated coastal waters of a state or the Northern Territory.

Normally there is no application fee for the assessment of a safety case, as the costs are recovered via the safety case levy imposed by the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003*. This regulation does not change that situation as far as ordinary safety cases are concerned, including where the facility is constructed outside Safety Authority waters.

The regulation is required to ensure that the cost-recovery arrangements are appropriate for projects that employ new technologies. It will enable the Safety Authority to engage with an operator early in the safety case development process, while the facility is still being designed, by allowing the Safety Authority to recoup the additional costs of engaging in a longer drawn-out process of assessment in those circumstances.

2.

The regulation also provides that the fee must not exceed that total of the expenses incurred by the Safety Authority for the purposes of assessing the particular safety case. Once the safety case assessment process reaches the point where it is much the same as an ordinary safety case assessment, the Safety Authority will cease charging for the service.

The fee is only incurred in the instance where the operator chooses to submit an early safety case for a proposed facility – they are not required to do so under the Principal Regulations or the Act.