

OFFSHORE PETROLEUM INDUSTRY: AMENDMENTS TO ENVIRONMENTAL MANAGEMENT REGULATIONS

A photograph of an offshore petroleum platform at sunset. The platform is a complex structure of steel beams and pipes, supported by a central column. A large crane arm extends from the platform. The sun is low on the horizon, creating a bright orange and yellow glow that reflects on the water. The sky is filled with soft, golden clouds.

On 6 December 2012, the Australian Federal Government released an Exposure Draft of proposed amendments to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations).

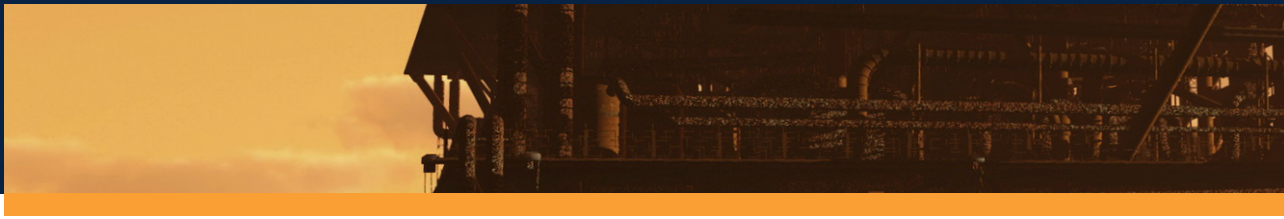
The amendments implement the findings of a review conducted in 2012, as part of the Federal Government's response to the Montara incident. The amendments also propose the streamlining of offshore environmental approvals so that NOPSEMA delivers a "one-stop shop" for all petroleum activities in Commonwealth waters. The Exposure Draft, as well as two reports detailing the changes to the offshore environmental approvals process, are available for public comment until 20 December 2013.

Streamlining of environmental approvals

The 'Program' proposal, if implemented, will result in NOPSEMA becoming the sole regulator for all offshore petroleum environmental assessments and approvals meaning companies no longer need a separate approval from the Minister for Environment under Part 3 of the *Environmental Protection and Biodiversity Act 1999* (Cth) Act (the EPBC Act).

The Program, which will be given effect by the amendments to the Environment Regulations, requires proponents of development projects first to submit an Offshore Project Proposal (OPP), which must describe the whole life-cycle of the proposed project, and secondly submit an Environment Plan which must address the project's environmental impacts and risks.

The OPP replaces the requirement for a proponent to refer their project under the EPBC Act. The OPP will be a much wider assessment than the Environment Plan, which is already required under the Environment Regulations. The EPBC Act provides for lower levels of assessment depending on a project's nature and scope, but OPPs are a 'one size fits all' structure for large scale offshore projects. This uniform approach has the potential to increase the regulatory burden for smaller scale projects.



OPPs for development projects will require a minimum of four weeks public consultation. Under the EPBC Act the scope of public consultation is limited to matters protected under the EPBC Act but there is no such limitation on OPPs. This consultation process may therefore encompass a wider range of concerns regarding the potential environmental impact of projects, which is likely to increase compliance costs and timeframes for proponents.

To gain NOPSEMA approval, proponents must demonstrate in their OPPs that the environmental impacts and risks arising from a project will be managed to an “acceptable” level. Environment Plans must also demonstrate that environmental impacts and risks will be reduced to a level that is “as low as reasonably practicable.” Unfortunately the Program does not specify exactly what is required from proponents to demonstrate “acceptable” management.

It should be noted that currently there is no detail provided as to how NOPSEMA will effectively reduce the regulatory burden for multi-jurisdictional projects. For example, a project that is to be carried out in both Commonwealth and State/Territory waters would need:

- An OPP and Environment Plan to be assessed by NOPSEMA.
- To be referred under the EPBC Act for approval by the Minister for Environment if it is likely to have an impact on a matter of national environmental significance within State/Territory waters.
- State/Territory environmental impact assessment.

Environment regulations review

Significant amendments within the Exposure Draft, arising from the 2012 review of the Environment Regulations include the following:

- **Transfer of responsibility for compliance from ‘operator’ to ‘titleholder’**
The amendments will result in titleholders replacing operators in being responsible for submitting and complying with Environment Plans. As the titleholder is responsible under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) for any environmental impacts of a petroleum activity the amendments make the Regulations consistent with the Act.
- **Assessment and acceptance process**
All environmental impacts and risks would be required to be evaluated in an Environment Plan, whereas currently only significant impacts and risks must be addressed. If an Environment Plan is not accepted, NOPSEMA will notify the titleholder which aspect of the Environment Plan does not meet the required criteria and provide a proposed timeframe for resubmission. The ability for NOPSEMA to continually increase timeframes for assessment presents a potential risk to a project’s critical path.
- **Environmental performance reporting**
The amendments provide a requirement for titleholders to, at least annually, submit reports to NOPSEMA about their

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environmental performance. If NOPSEMA reject a report twice this will be a ground for NOPSEMA to withdraw acceptance of an Environment Plan.

- **Definition of petroleum activity**
‘Petroleum activity’ is specifically defined as operations or works in an offshore area carried out for the purpose of exercising a right, or discharging an obligation conferred on a petroleum titleholder under the OPGGS Act. This will remove the need for proponents to submit Environment Plans for standard offshore activities such as pipeline route surveys.
- **Monitoring requirements**
Appropriate monitoring of emissions and discharges to the environment will be required throughout the life of a petroleum activity. Titleholders are also required to have arrangements in place for operational monitoring in the event of an uncontrolled hydrocarbon release to enable an assessment of the impacts and the effectiveness of any response.



■ **Marine pollution incident requirements**

The amendments clarify the objectives and content to be included in arrangements for testing the response arrangements in the oil spill contingency plan, including the arrangement for scientific monitoring of an incident.

■ **Incident reporting**

Any breach of an environmental performance outcome or standard, that is not a reportable incident, must be reported to NOPSEMA. Reportable incidents must be notified to NOPSEMA orally rather than in writing.

■ **Environment Plan summary**

NOPSEMA now require information summarising arrangements for monitoring and oil spill response to be included in the Environment Plan summary which is to be made available to the public within 10 days of an Environment Plan being accepted.

■ **Notification of proposed activity**

On submission of an Environment Plan by a titleholder NOPSEMA will publish a notification of a proposed petroleum activity on the NOPSEMA website. This notification will be updated when a decision is made to accept or reject an Environment Plan.

Impact on current proposals

The transitional provisions in the Exposure Draft state that Environment Plans submitted prior to the commencement of the amendments will be assessed against the Environment Regulations in force prior to commencement of the amendments. The standalone requirement to report environmental performance will apply only to Environment Plans submitted after the commencement of the amendments. NOPSEMA expects companies currently proposing petroleum activities to continue to consider their obligation to refer proposals for consideration under the EPBC Act. Proponents should seek confirmation of this position from NOPSEMA and/or the Department of Environment.

Next steps

Proponents have until 20 December 2013 to lodge submissions on the proposed amendments to the Environment Regulations, the Program Report and the Strategic Assessment Report. Unless marked as 'confidential', submissions will be publically referenced. The taskforce will then revise the proposed amendments and finalise the reports, incorporating the submissions. The finalised reports will be submitted to the Environment Minister for endorsement. The amendments, incorporating the new streamlined environmental approvals process, are expected to be finalised by February 2014. Copies of the documents are available through a

link on NOPSEMA's website (<http://www.nopsema.gov.au/>). Comments and feedback can be sent to offshoreenvironment@ret.gov.au.

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