

Offshore Petroleum (Safety Levies) Regulations 2004 2004 No. 315

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 315

Offshore Petroleum (Safety Levies) Act 2003

Petroleum (Submerged Lands) Act 1967

Offshore Petroleum (Safety Levies) Regulations 2004

The *Petroleum (Submerged Lands) Amendment Act 2003* amended the *Petroleum (Submerged Lands) Act 1967* (the Act), creating the National Offshore Petroleum Safety Authority (NOPSA), defining its governance arrangements and establishing its functions.

The Act provides that NOPSA is funded through various payments, including certain fees and industry levies. The *Offshore Petroleum (Safety Levies) Act 2003* (the Safety Levies Act) imposes the levies and establishes the basis on which they will be payable. The levies are:

- * a safety investigation levy, to be imposed on the operator of a facility in relation to the investigation, by NOPSA, of an accident or dangerous occurrence at that facility;
- * a safety case levy, an annual levy to be imposed in relation to the safety plan, known as a "safety case", that is in force in relation to a facility; and
- * a pipeline safety management plan levy, an annual levy to be imposed in relation to the pipeline safety management plan that is in force in relation to a pipeline.

The purpose of the Regulations is to prescribe how the amounts of the levies and fees are worked out, when they are due and payable, and other related matters.

Subsection 157(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that by the Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, section 11 of the Safety Levies Act provides that the Governor-General may make regulations for the purposes of sections 5, 6, 7, 8, 9 and 10 of that Act. The matters addressed by such regulations are as follows:

- * a safety investigation levy is imposed if there is a notifiable accident or occurrence in relation to a facility located in Commonwealth waters, an OHS inspector begins to investigate that accident or occurrence, and the condition or conditions specified in the regulations are satisfied (section 5). Section 6 makes equivalent provisions in relation to the investigation of accidents and occurrences that occur in relation to facilities located in State and NT waters;
- * the amount of the safety case levy in respect of a year, or a part of a year, for facilities located in or proposed to be located in Commonwealth waters is the amount specified in or worked out in accordance with the regulations. Different amounts or calculation methods may apply to different types of facilities (section 7). Section 8 makes equivalent provisions in relation to safety cases for facilities located in or proposed to be located in State and NT waters; and

* the amount of the pipeline safety management plan levy in respect of a year, or a part of a year, for pipelines located or proposed to be located in Commonwealth waters is the amount specified in or worked out in accordance with the regulations (section 9). Different amounts or calculation methods may apply to different types of pipelines. Section 10 makes equivalent provisions in relation to pipeline safety management plans for pipelines located in or proposed to be located in state and NT waters.

In addition, the cost-recovery provisions of the Act enable the making of regulations as follows:

* Subsection 150YQ(1) states that regulations may provide for payment of fees for services provided by the Safety Authority.

* Subsection 150YR(1) states that the investigation levy imposed by the Safety Levies Act becomes due and payable at a time specified or worked out in accordance with the regulations.

* Subsections 150YS(1) and (2) state that regulations may make provisions for remittance of part of the safety case levy imposed by the Safety Levies Act if the facility is of a kind declared by the regulations to operate only intermittently, and the facility in fact only operates for a part of the relevant time. Subsection 150YS (3) states that the safety case levy becomes due and payable at the time specified or worked out in accordance with the regulations.

* Subsection 150YT(1) states that the pipeline safety management plan levy becomes due and payable at the time specified or worked out in accordance with the regulations.

The Regulations provide for all of these matters. The Regulations make separate but identical provisions for levies in relation to facilities and pipelines located in Commonwealth waters, and in relation to facilities and pipelines located in State and Northern Territory coastal waters. This reflects the distinction made between these geographical areas in the Act.

Details of the Regulations are set out in the Attachment.

Consultation on the levy proposals took place with the industry associations over the period December 2003 to March 2004 and a Consultation Draft of the proposed Regulations was circulated to industry in August 2004.

Neither the Act nor the Safety Levies Act specify conditions that need to be met before the power to make the Regulations is exercised.

The Regulations commence on 1 January 2005, to coincide with the commencement of the regulatory activities of NOPSA..

Authority: Subsection 157 (1) of the *Petroleum (Submerged Lands) Act 1967*.

Section 11 of the *Offshore Petroleum (Safety Levies) Act 2003*.

ATTACHMENT

Details of the *Offshore Petroleum (Safety Levies) Regulations 2004*

PART 1 - PRELIMINARY

Regulation 1 - Name of Regulations

This regulation provides that the title of the Regulations is the *Offshore Petroleum (Safety Levies) Regulations 2004*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on 1 January 2005, to coincide with the commencement of the regulatory activities of the National Offshore Petroleum Safety Authority (NOPSA).

Regulation 3 - Definitions

This regulation provides definitions of particular terms used in the Regulations.

The term *OPSL Act* is defined as meaning the *Offshore Petroleum (Safety Levies) Act 2003*, and the term *PSL Act* is defined as meaning the *Petroleum (Submerged Lands) Act 1967*.

The following terms are then defined as having the same meaning as in Part IIIC of the *PSL Act*:

- CEO;
- *Commonwealth waters*;
- *designated coastal waters*;
- *OHS inspector*;
- *Safety Authority*;
- *Safety Authority waters*
- *State PSLA*; and
- *Territory PSLA*.

The term *part quarter* is defined as meaning a period within a quarter that is at least 1 day long, but is less than the whole quarter, during which there is a safety case in force in relation to a facility.

The term *quarter* is defined as meaning a period of 3 months starting on 1 January, 1 April, 1 July or 1 October in any year.

The note clarifies that the following words and expressions have the same meaning as given by section 3 of the *OPSL Act*:

- applicable State or Territory safety law;

- pipeline safety management plan levy;
- safety case levy;
- safety investigation levy;
- State safety law;
- Territory safety law; and
- year.

The definitions made by this regulation apply to all Parts of the Regulations. Terms that have meanings particular to individual Parts of the Regulations are defined within those Parts (see regulations 6, 13, 20, 28, 36 and 42.)

In the Regulations, NOPSA is referred to as the *Safety Authority*. This term is used throughout the rest of this attachment.

Regulation 4 - Payment of levy for pipeline located both in Commonwealth waters and State/NT designated coastal waters

Section 9 of the OPSL Act applies a levy to a pipeline, located in Commonwealth waters, for which there is a pipeline safety management plan in force. Similarly, section 10 of the OPSL Act applies a levy to a pipeline, located in the coastal waters of a State or the Northern Territory, for which there is a pipeline safety management plan in force. Sections 5 and 6 of the OPSL Act impose safety investigation levy in respect of each jurisdiction.

In many cases a pipeline will be located both in Commonwealth waters and in State or Northern Territory coastal waters, yet such a pipeline will have only one pipeline safety management plan, and the regulatory effort required by the Safety Authority will not be increased by virtue of the fact that the pipeline is located in more than one area. The OPSL Act will, however, impose levy in respect of each area in which the pipeline is located. Similarly, if a notifiable accident or occurrence takes place at a part of a pipeline that traverses two jurisdictions, the OPSL Act imposes safety investigation levy in respect of both jurisdictions.

Regulation 4 prevents unwarranted levies being applied in such cases, by setting the amount of the levy to zero except in the area where the longer or longest part of the pipeline is located. The effect of the regulation is that the amount of levy is not to be paid more than once in the same period in relation to a pipeline, with the full length of the pipeline being credited to one jurisdiction as a notional length. In the case of safety investigation levy, the relevant costs of the whole investigation will be attributed to the area where the longer or longest part of the pipeline is located. The regulation also removes any requirement for the Safety Authority to notify the pipeline licensee that levy is due, if that levy has been set to zero.

Regulation 5 - Payment of levy for pipeline located equally in Commonwealth waters and State/NT designated coastal waters

This regulation makes provisions equivalent to those established by regulation 4, but for the situation where a pipeline is located equally in Commonwealth waters and in State or Northern Territory coastal waters. In this case the amount of the levy is set to zero in all areas except Commonwealth waters.

PART 2 - SAFETY INVESTIGATION LEVY - COMMONWEALTH WATERS

In an ordinary year, the full costs of the Safety Authority's regulatory operations will be recovered from facility operators generally, through the annual safety case levy and pipeline safety management plan levy. The costs recovered by those levies will include costs associated with routine investigations of accidents and dangerous occurrences that an operator of a facility is required to notify to the Safety Authority. Such investigations will form part of the Safety Authority's ordinary workload.

The purpose of the safety investigation levy is to recover from an individual operator the cost of an investigation into a major accident or occurrence at the operator's facility that has required a very substantial commitment of money and resources by the Safety Authority. The safety investigation levy avoids inequitable cross-subsidisation by those operators who have a good safety performance of an operator whose operations have resulted in a major accident or occurrence.

Division 1 - Preliminary

Regulation 6 - Definitions for Part 2

The regulation provides definitions for particular terms relevant to Commonwealth waters and this Part.

The following terms are defined as having the same meaning as in section 5 of the OPSL Act:

- *accident;*
- *dangerous occurrence;*
- *facility;*
- *inspection;*
- *notifiable accident or occurrence;* and
- *operator.*

The term *incremental cost* is defined as meaning the cost worked out under subregulation 7(2).

Regulation 7 - Condition for imposition of safety investigation levy -inspection in relation to notifiable accident or occurrence

This regulation establishes the condition for imposition of a safety investigation levy, and establishes related administrative matters:

- Subregulation 7(1) establishes that the prescribed condition for paragraph 5(1)(c) of the OPSL Act - the condition that causes a safety investigation levy to be imposed - is that the incremental cost of an inspection is greater than the threshold amount. A threshold amount is established as the safety investigation levy is only to be imposed for major investigations that go beyond the routine regulatory activities of the Safety Authority.
- Subregulation 7(2) establishes that the incremental cost of an inspection is calculated as the sum of the costs and expenses reasonably incurred by the Safety Authority in carrying out the inspection.

- Subregulation 7(3) establishes that the costs and expenses that the Safety Authority reasonably incurs in carrying out an inspection: (a) include (but are not limited to) remuneration and other costs in relation to OHS inspectors and other staff of the Safety Authority who are involved in the inspection; and (b) do not include any share of fixed overheads. The levy will recover only the incremental cost of an inspection - ie the costs that the Safety Authority would not have incurred if the inspection had not taken place. Costs relating to staff of the Safety Authority are included because these are seen as opportunity costs. Staff involved in the inspection will not be available to carry out their routine duties, eg routine monitoring inspections. The incremental cost does not include any share of existing fixed overheads, eg rent of office space or corporate costs, that would have been incurred in any case.
- Subregulation 7(4) sets the threshold amount at \$30,000.
- Subregulation 7(5) requires the Safety Authority to give notice to the operator as soon as practicable after the threshold amount is exceeded.

Division 2 - Working out safety investigation levy

Regulation 8 - Determination of no obligation to pay amount of safety investigation levy

The safety investigation levy is a means of avoiding subsidisation of operators with poor health and safety performance by those operators who have a good performance. The OPSL Act imposes the levy on an operator whenever the threshold amount of incremental costs of the investigation is exceeded.

However, there may be circumstances where it would not be appropriate to impose a levy on an operator simply because there has been an accident or dangerous occurrence at the operator's facility, even though an extensive investigation proves necessary. For example, it might be found that the root cause of the accident or dangerous occurrence was common to other facilities and other operators, meaning that the industry in general will benefit from the findings of the investigation. To allow for such cases, this regulation provides a mechanism whereby the Safety Authority can determine that it is inappropriate for the operator to pay the safety investigation levy, whereupon the amount of the levy is set to zero.

Subregulation 8(1) establishes that the Safety Authority may determine, in writing, that it is inappropriate for the operator of a facility to pay the post-threshold incremental cost of an inspection. Subregulation 8(2) establishes that such a determination may be made at any time after the incremental cost of the inspection exceeds the threshold amount.

Subregulation 8(3) provides that an operator and the Safety Authority may agree at any time to the selection and appointment of an independent expert to investigate and report on whether the Safety Authority should make a determination under subregulation 8(1). Subregulation 8(4) does not allow the Safety Authority to unreasonably withhold agreement to the selection and appointment of a person as the independent expert. These provisions ensure that the decision by the Safety Authority whether to make a determination under subregulation 8(1) is reviewable by a person who has the necessary expert knowledge of the technology and operating environment on offshore petroleum facilities and a familiarity with industry safety practices.

Subregulation 8(5) provides that the operator bears the costs incurred for the services of the independent expert.

Subregulation 8(6) provides that the Safety Authority must consider the independent expert's report and that it may then make a determination under subregulation 8(1).

Subregulation 8(7) establishes that the Minister may give directions in writing to the Safety Authority with respect to subregulations (3) and (6), whilst subregulation 8(8) establishes that the Safety Authority must comply with any such directions.

Subregulation 8(9) establishes that, if the Safety Authority makes a determination under subregulation (1), it must give a copy of the determination to the operator as soon as practicable and the determination takes effect on the day the incremental cost of the inspection exceeded the threshold amount. This retrospective operation of the determination means that the levy amount will become zero from the time when the levy was imposed. Any levy already paid by the operator will be refundable.

Regulation 9 - Amount of safety investigation levy

Subregulation 9(1) establishes the amount of the levy.

Paragraph 9(1)(a) provides that, if the Safety Authority has not made any determination under subregulation 8(1) in relation to the inspection, the amount of the levy is the 'post-threshold incremental cost of the inspection'. (See regulation 7 for the meaning of 'incremental cost of the inspection'.)

Paragraph 9(1) (b) provides that, if the Safety Authority has made a determination under subregulation 8(1), the amount of the levy is zero.

Subregulation 9(2) establishes that the post-threshold incremental cost is the incremental cost of the inspection on the day that the inspection is complete minus the threshold amount. The effect of this is that the operator does not pay the first \$30,000 of the cost of the investigation.

Subregulation 9(3) establishes that the date the inspection is complete for the purposes of the safety investigation levy is either: (a) the day when a brief of evidence in relation to a proposed prosecution in connection with the particular accident or dangerous occurrence is referred by the Safety Authority to the Commonwealth Director of Public Prosecutions; or (b) the day the Safety Authority informs the operator in writing that the inspection is complete.

The note clarifies that the inspection may continue beyond this point, but that the levy ceases to accumulate.

Regulation 10 - Advice of independent expert about costs and expenses

This regulation provides for an independent expert to be appointed to review the reasonableness of the costs claimed to have been incurred by the Safety Authority for the purposes of carrying out the investigation. This ensures that there is transparency and rigour in the costing of the Safety Authority's performance of the inspection and therefore in the working out of the amount of the levy. It also ensures that the review is carried out by a person who has specialist expertise in the technology involved and who is familiar with proper investigatory processes.

Subregulation 10(1) provides that an operator and the Safety Authority may agree at any time to the selection and appointment of an independent expert to investigate and report on the reasonableness of the costs and expenses claimed to have been incurred by the Safety Authority in relation to the inspection. Subregulation 10(2) determines that the Safety Authority cannot unreasonably withhold agreement to the selection or appointment.

Subregulation 10(3) provides that the operator bears the costs incurred in relation to this.

Subregulation 10(4) provides that, when the Safety Authority receives the report of the independent expert, it must give a copy to the operator as soon as practicable, and must consider the report. If the Safety Authority has previously notified the operator of the amount of the levy or of an instalment of levy under regulation 11, it may either give a revised notice of the amount or it may withdraw the notice it gave previously to the operator under subregulation 7(5) (which said that the threshold amount had been exceeded.)

The Safety Authority is not bound by any recommendation in the independent expert's report, but the regulation provides for accountability of the Safety Authority in making its decision whether to accept the recommendation: subregulation 10(5) establishes that the Minister may give directions in writing to the Safety Authority with respect to the exercise of its powers under subregulations (1) and (4), whilst subregulation 10(6) establishes that the Safety Authority must comply with any such directions.

Division 3 - Paying safety investigation levy

Regulation 11 - When safety investigation levy is due and payable (PSL Act)

Subregulation 11(1) provides that, for subsection 150YR (1) of the PSL Act, this regulation sets out when the safety investigation levy is due and payable.

Subregulation 11(2) establishes that, if an investigation is taken to be complete within 3 months or less, the safety investigation levy is payable when the inspection is taken to be complete. Subregulation 11(3) establishes that, for longer investigations, the safety investigation levy is payable in instalments: one at the end of each 3 months period, starting when the inspection starts, and a final payment when the inspection is taken to be complete.

Subregulation 11(4) requires the Safety Authority to notify the operator that payment is due, within 14 days of the dates established by subregulations (2) and (3).

Subregulation 11(5) clarifies that a notification is valid even if it is late. Subregulation 11(6) establishes that the levy is due 30 days after notification.

Division 4 - Administration

Regulation 12 - Safety Authority must keep records

This regulation requires the Safety Authority to make records of the costs and expenses that are incurred in the incremental cost for an inspection, both prior to reaching the threshold and subsequently. The records must be kept for 7 years, and must be made available to the operator to whom they relate (either available for inspection, or provided as copies on request).

PART 3 - SAFETY INVESTIGATION LEVY - DESIGNATED COASTAL WATERS

Part 3 makes provision for the same matters as Part 2, but in relation to coastal State/ Northern Territory waters.

Division 1 - Preliminary

Regulation 13 - Definitions for Part 3

The regulation provides definitions for particular terms relevant to state and Northern Territory coastal waters and this Part.

The following terms are defined as having the same meaning as in section 6 of the OPSL Act:

- *accident;*
- *dangerous occurrence;*
- *facility;*
- *inspection;*
- *notifiable accident or occurrence;* and
- *operator.*

The term *incremental cost* is defined as meaning the cost worked out under subregulation 14(2).

Regulation 14 - Conditions for imposition of safety investigation levy

This regulation establishes the condition for imposition of a safety investigation levy, and establishes related administrative matters:

- * Subregulation 14(1) establishes that the prescribed condition for paragraph 6(1)(c) of the OPSL Act - the condition that causes a safety investigation levy to be imposed - is that the incremental cost of an inspection is greater than the threshold amount. A threshold amount is established as the safety investigation levy is only to be imposed for major investigations that go beyond the routine regulatory activities of the Safety Authority.
- * Subregulation 14(2) establishes that the incremental cost of an inspection is calculated as the sum of the costs and expenses reasonably incurred by the Safety Authority in carrying out the inspection.
- * Subregulation 14(3) establishes that the costs and expenses that the Safety Authority reasonably incurs in carrying out an inspection: (a) include (but are not limited to) remuneration and other costs in relation to OHS inspectors and other staff of the Safety Authority who are involved in the inspection; and (b) do not include any share of fixed overheads. The levy will recover only the incremental cost of an inspection - ie the costs that the Safety Authority would not have incurred if the inspection had not taken place. Costs relating to staff of the Safety Authority are included because these are seen as opportunity costs. Staff involved in the inspection will not be available to carry out their routine duties, eg routine monitoring inspections. The incremental cost does not include any share of existing fixed overheads, eg rent of office space or corporate costs, that would have been incurred in any case.
- * Subregulation 14(4) sets the threshold amount at \$30,000.
- * Subregulation 14(5) requires the Safety Authority to give notice to the operator as soon as practicable after the threshold amount is exceeded.

Division 2 - Working out safety investigation levy

Regulation 15 - Determination of no obligation to pay amount of safety investigation levy

This regulation makes provision for the same matters as Regulation 8 in Part 2, but in relation to State or Northern Territory waters.

Subregulation 15(1) establishes that the Safety Authority may determine, in writing, that it is inappropriate for the operator of a facility to pay the post-threshold incremental cost of an inspection. Subregulation 15(2) establishes that such a determination may be made at any time after the incremental cost of the inspection exceeds the threshold amount.

Subregulation 15(3) provides that an operator and the Safety Authority may agree at any time to the selection and appointment of an independent expert to investigate and report on whether the Safety Authority should make a determination under subregulation 15(1). Subregulation 15(4) does not allow the Safety Authority to unreasonably withhold agreement to the selection and appointment of a person as the independent expert. These provisions ensure that the decision by the Safety Authority whether to make a determination under subregulation 15(1) is reviewable by a person who has the necessary expert knowledge of the technology and operating environment on offshore petroleum facilities and a familiarity with industry safety practices.

Subregulation 15(5) provides that the operator bears the costs incurred for the services of the independent expert.

Subregulation 15(6) provides that the Safety Authority must consider the independent expert's report and that it may then make a determination under subregulation 15(1).

Subregulation 15(7) establishes that the Minister may give directions in writing to the Safety Authority with respect to subregulations (3) and (6), whilst subregulation 15(8) establishes that the Safety Authority must comply with any such directions.

Subregulation 15(9) establishes that, if the Safety Authority makes a determination under subregulation (1), it must give a copy of the determination to the operator as soon as practicable and the determination takes effect on the day the incremental cost of the inspection exceeded the threshold amount. This retrospective operation of the determination means that the levy amount will become zero from the time when the levy was imposed. Any levy already paid by the operator will be refundable.

Regulation 16 - Amount of safety investigation levy

Subregulation 16(1) establishes the amount of the levy.

Paragraph 16(1)(a) provides that, if the Safety Authority has not made any determination under subregulation 15(1) in relation to the inspection, the amount of the levy is the 'post-threshold incremental cost of the inspection'. (See regulation 14 for the meaning of 'incremental cost of the inspection'.)

Paragraph 16(1) (b) provides that, if the Safety Authority has made a determination under subregulation 15(1), the amount of the levy is zero.

Subregulation 16(2) establishes that the post-threshold incremental cost is the incremental cost of the inspection on the day that the inspection is complete minus the threshold amount. The effect of this is that the operator does not pay the first \$30,000 of the cost of the investigation.

Subregulation 16(3) establishes that the date the inspection is complete for the purposes of the safety investigation levy is either: (a) the day when a brief of evidence in relation to a proposed prosecution in connection with the particular accident or dangerous occurrence is referred by the Safety Authority to an agency responsible for prosecutions in the relevant jurisdiction (which may be the Commonwealth Director of Public Prosecutions); or (b) the day the Safety Authority informs the operator in writing that the inspection is complete.

The note clarifies that the inspection may continue beyond this point, but that the levy ceases to accumulate.

Regulation 17 - Advice of independent expert about costs and expenses

This regulation makes provision for the same matters as Regulation 10 in Part 2, but in relation to State or Northern Territory waters.

Subregulation 17(1) provides that an operator and the Safety Authority may agree at any time to the selection and appointment of an independent expert to investigate and report on the reasonableness of the costs and expenses claimed to have been incurred by the Safety Authority in relation to the inspection. Subregulation 17(2) determines that the Safety Authority cannot unreasonably withhold agreement to the selection or appointment.

Subregulation 17(3) provides that the operator bears the costs incurred in relation to this.

Subregulation 17(4) provides that, when the Safety Authority receives the report of the independent expert, it must give a copy to the operator as soon as practicable, and must consider the report. If the Safety Authority has previously notified the operator of the amount of the levy or of an instalment of levy under regulation 18, it may either give a revised notice of the amount or it may withdraw the notice it gave previously to the operator under subregulation 14(5) (which said that the threshold amount had been exceeded.)

The Safety Authority is not bound by any recommendation in the independent expert's report, but the regulation provides for accountability of the Safety Authority in making its decision whether to accept the recommendation: subregulation 17(5) establishes that the Minister may give directions in writing to the Safety Authority with respect to the exercise of its powers under subregulations (1) and (4), whilst subregulation 17(6) establishes that the Safety Authority must comply with any such directions.

Division 3 - Paying safety investigation levy

Regulation 18 - When safety investigation levy is due and payable (PSL Act)

Subregulation 18(1) provides that, for subsection 150YR (1) of the PSL Act, this regulation sets out when the safety investigation levy is due and payable.

Subregulation 18(2) establishes that, if an investigation is taken to be complete within 3 months or less, the safety investigation levy is payable when the inspection is taken to be complete. Subregulation 18(3) establishes that, for longer investigations, the safety investigation levy is payable in instalments: one at the end of each 3 months period, starting when the inspection starts, and a final payment when the inspection is taken to be complete.

Subregulation 18(4) requires the Safety Authority to notify the operator that payment is due, within 14 days of the dates established by subregulations (2) and (3). Subregulation 18(5) clarifies that a notification is valid even if it is late. Subregulation 18(6) establishes that the levy is due 30 days after notification.

Division 4 - Administration

Regulation 19 - Safety Authority must keep records

This regulation requires the Safety Authority to make records of the costs and expenses that are incurred in the incremental cost for an inspection, both prior to reaching the threshold and

subsequently. The records must be kept for 7 years, and must be made available to the operator to whom they relate (either available for inspection, or provided as copies on request).

PART 4 - SAFETY CASE LEVY - COMMONWEALTH WATERS

Division 1 - Preliminary

Regulation 20 - Definitions for Part 4

The regulation provides definitions for particular terms relevant to Commonwealth waters and this Part.

The following terms are defined as having the same meaning as in section 7 of the OPSL Act:

- *facility*;
- *operator*;
- *proposed facility*; and
- *safety case in force in relation to a facility*.

The term *mobile facility* means a facility of a kind mentioned in Schedule 2 to the Regulations.

The term *variable-rating facility* is defined as meaning a facility mentioned in item 2 of the table in item 2.3 of Schedule 1 to the Regulations. These facilities are ones for which the amount of the safety case levy will vary according to the activities that are being conducted at the facility.

The Note clarifies that *facility* includes a proposed facility, and that a levy is imposed on a facility that has a safety case in force even if the facility is not yet located in Commonwealth waters. This note is needed because, although a safety case is not required before construction or installation of the facility has commenced in Commonwealth waters, operators may seek earlier acceptance of a safety case. For example the operator of a mobile drilling facility that is located outside Australia may wish to have an accepted safety case so that it can effectively compete for business in Australia.

Division 2 - Working out safety case levy

Regulation 21 - Amount of safety case levy

Subregulation 21(1) establishes that the amount of the safety case levy in relation to a facility is the "facility amount" plus the "Safety Management System amount"(SMS amount), worked out in accordance with Schedule 1. The Note clarifies that an operator only has to pay one SMS amount regardless of how many facilities under the management and control of that operator have safety cases in force.

Subregulation 21(2) provides that if a mobile facility moves from designated coastal waters to Commonwealth waters during the year then the facility amount in Commonwealth waters is set to zero. This has the effect of ensuring that an operator is not charged twice for the same facility in one year.

Subregulation 21(3) ensures that if a safety case has been accepted in relation to a proposed facility, but the proposed facility has yet to enter Safety Authority waters, then no levy is payable. The levy will only apply when that facility enters Safety Authority waters.

The division of the levy into two amounts is an equity measure. Under the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*, a safety case must comprise descriptions of the facility itself, a "formal safety assessment" for the facility and the safety management system. Whilst the descriptions of the facility and of the formal safety assessment might be specific to the facility, it is common for an operator to develop a safety management system that is common to all of that operator's facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For subsequent facilities, in relation to the safety management system, the Safety Authority would focus most of its activity on how the system is implemented on these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy that is established through this regulation.

Regulation 22 - Reconciliation of safety case levy recovered by instalments with levy payable

This regulation provides a mechanism whereby the amount of the safety case levy collected may be varied during the course of a year, so as to reconcile the amounts invoiced in advance with the amounts that should, as events have turned out, been invoiced.

Subregulation 22(1) requires the Safety Authority to ensure so far as is practicable that the amounts of the levy instalments notified to each operator recover the whole of the levy that is payable, taking into account any unforeseen changes in the applicable facility rating, and also taking account of remissions and adjustments under regulations 25 and 26.

Subregulation 22(2) establishes that, if there is or will be a shortfall in the amounts paid, then the Safety Authority must notify the operator in writing, and the operator must then pay the outstanding amount within 30 days.

Division 3 - Paying safety case levy

Regulation 23 - When safety case levy is due and payable (PSL Act)

This regulation determines when each instalment of the safety case levy is due and payable.

Item 1 of the table under subregulation 23(2) establishes that the first instalment of the safety case levy for a facility that is not a mobile facility is due and payable 1 month after the safety case comes into force. This may be an instalment for either a part quarter or a whole quarter, depending on the day the safety case comes into force.

Item 2 of the table establishes that each subsequent instalment for a facility that is not a mobile facility is due and payable 1 month in advance of the whole quarter to which the levy relates, or the date established by item 1, if later.

Items 3 and 4 of the table establish that each instalment of the safety case levy for a mobile facility is due and payable 30 days after the Safety Authority notifies the operator that the levy is due and payable.

Therefore the levy for a facility that is not mobile is generally due and payable in advance, whilst the levy for a facility that is mobile is due and payable in arrears. Mobile facilities operate

intermittently, and hence if their levy instalments were due and payable in advance many adjustments might need subsequently to be made. As levies for mobile facilities are a small proportion of the total to be collected by the Safety Authority, it is considered preferable to minimise the administrative burden.

Regulation 24 - Notifying when safety case levy is due and payable (PSL Act)

This regulation determines when the Safety Authority will notify each operator when the levies are due and payable.

Item 1 of the table under subregulation 24(1) establishes that notice of each instalment of the first year's safety case levy for a facility that is not a mobile facility is to be given when the Safety Authority first notifies the operator of acceptance of the safety case.

Item 2 of the table establishes that notice of each instalment of each subsequent year's safety case levy for a facility, that is not a mobile facility, is to be given on or before 30 November of the previous year, if the safety case was in force before 30 November. Item 2 also establishes that if the safety case came into force after 30 November in the previous year the latter of 30 November or the date established by item 1 is the date of notice.

Items 3 and 4 of the table establish that notice of the amount and due date of each instalment of the safety case levy for a mobile facility is to be given by the end of the month following the end of each quarter.

Subregulation 24(2) clarifies that a notification is valid even if it is late and, in the event of a late notification of levy payable in respect of a mobile facility, levy is due 30 days after the notice is given.

Regulation 25 - Remitting part of safety case levy

This regulation establishes processes for remitting part of a safety case levy for mobile facilities.

Paragraph 25(1) (a) provides that a mobile facility (ie a type of facility listed in Schedule 2) is declared to be a facility that operates on an intermittent basis. This applies the power in section 150YS of the PSL Act to make regulations providing for the remittal of part of an amount of safety case levy where a facility in fact only operates for a part of a year.

Paragraph 25(1) (b) then provides that the Safety Authority may remit part of an amount of a safety case levy for mobile facilities in accordance with this regulation. Remissions of 'facility amount' and of 'SMS amount' are worked out separately, as the basis of the remission is slightly different.

Subregulation 25(2) provides for a remission of facility amount for a quarter according to the number of days in the quarter that the facility was not operated in Safety Authority waters.

Subregulation 25(3) provides that a remission of facility amount must not result in the facility amount payable in respect of the facility being less than 2 whole quarter amounts in any rolling 4-quarter period (taking into account levy payable under Part 4 and Part 5 of these Regulations). That is, the minimum facility amount is two whole quarter amounts in any 12 month period.

Subregulation 25(4) provides for a remission of SMS amount for a quarter according to the number of days in the quarter that no facility of the operator was operated in Safety Authority waters. Because only one SMS amount is paid by an operator in any year, it is not appropriate to remit the SMS amount if the operator still has a facility in operation.

Subregulation 25(5) provides that a remission of SMS amount must not result in the SMS amount payable in respect of the facility being less than 2 quarterly instalments in any rolling 4-quarter period (taking into account levy payable under Part 4 and Part 5 of these Regulations). That is, the minimum SMS amount payable by an operator is two quarterly instalments in any 12 month period.

Regulation 26 - Adjustment of amount of instalments

This regulation establishes mechanisms to adjust the amount of the instalments of levy to take account of operations at a facility that affect the amount of levy that is payable. These mechanisms are in addition to the provisions for remittals under regulation 25.

Subregulation 26(1) establishes three sets of circumstances where this regulation applies. The first (paragraph (a)) is if the operator newly informs the Safety Authority about operations at the facility that may affect the facility rating. The second (paragraph (b)) is if the operator amends previous information to the Safety Authority about operations at the facility that may affect the facility rating. The third (paragraph (c)) is if the Safety Authority becomes aware by other means that operations at the facility may affect the facility rating.

Subregulation 26(2) requires the Safety Authority to increase or decrease the subsequent instalment or instalments to take account of the nature of the operations at the facility. However, subregulation 26(3) establishes that an increase or decrease cannot be made unless the Safety Authority gives notice at least 14 days prior to the due date of an affected instalment.

Regulation 27 - Operator of variable-rating facility must keep Safety Authority informed about operations

This regulation relates to the provisions of regulation 26, and requires the operator of a variable rating facility to keep the Safety Authority informed about the operations at the facility, as they may affect the rating.

PART 5 - SAFETY CASE LEVY - DESIGNATED COASTAL WATERS

Part 5 makes provisions for the same matters as Part 4, but in relation to coastal state/ Northern Territory waters.

Division 1 - Preliminary

Regulation 28 - Definitions for Part 5

The regulation provides definitions for particular terms relevant to State and Northern Territory coastal waters and this Part.

The following terms are defined as having the same meaning as in section 8 of the OPSL Act:

- * *facility;*
- * *operator;*
- * *proposed facility;* and
- * *safety case in force in relation to a facility.*

The term *mobile facility* means a facility of a kind mentioned in Schedule 2 to the Regulations.

The term *variable-rating facility* is defined as meaning a facility mentioned in item 2 of the table in item 2.3 of Schedule 1 to the Regulations. These facilities are ones for which the amount of the safety case levy will vary according to the activities that are being conducted at the facility.

The Note clarifies that *facility* includes a proposed facility, and that a levy is imposed on a facility that has a safety case in force even if the facility is not yet located in State or Northern Territory coastal waters. This note is needed because, although a safety case is not required before construction or installation of the facility has commenced in State or Territory waters, operators may seek earlier acceptance of a safety case. For example the operator of a mobile drilling facility that is located outside Australia may wish to have an accepted safety case so that it can effectively compete for business in Australia.

Division 2 - Working out safety case levy

Regulation 29 - Amount of safety case levy

Subregulation 29(1) establishes that the amount of the safety case levy in relation to a facility is the "facility amount" plus the "SMS amount", worked out in accordance with Schedule 1. The Note clarifies that an operator only has to pay one SMS amount regardless of how many facilities under the management and control of that operator have safety cases in force.

Subregulation 29(2) provides that if a mobile facility moves from Commonwealth waters to designated coastal waters during the year then the levy in designated coastal waters is set to zero. This has the effect of ensuring that the operator is not charged two levies in one year operating in Safety Authority waters.

Subregulation 29(3) ensures that if a safety case has been accepted in relation to a proposed facility, yet the proposed facility has yet to enter Safety Authority waters, then no levy is payable. When that facility enters Safety Authority waters then the levy applies.

The structure of the levy is based on the same principles as for safety case levy in Commonwealth waters (Part 4 of the Regulations).

Regulation 30 - Reconciliation of safety case levy recovered by instalments with levy payable

This regulation provides a mechanism whereby the amount of the safety case levy collected may be varied during the course of a year, so as to reconcile the amounts invoiced in advance with the amounts that should, as events have turned out, have been invoiced.

Subregulation 30(1) requires the Safety Authority to ensure so far as is practicable that the amounts of the levy instalments notified to each operator recover the whole of the levy that is payable, taking into account any unforeseen changes in the applicable facility rating, and also taking account of remissions and adjustments under regulations 33 and 34.

Subregulation 30(2) establishes that, if there is or will be a shortfall in the amounts paid, then the Safety Authority must notify the operator in writing, and the operator must then pay the outstanding amount within 30 days.

Division 3 - Paying safety case levy

Regulation 31 - When safety case levy is due and payable (PSL Act)

This regulation determines when each instalment of the safety case levy is due and payable.

Item 1 of the table under subregulation 31(2) establishes that the first instalment of the safety case levy for a facility that is not a mobile facility is due and payable 1 month after the safety case comes into force. This may be an instalment for either a part quarter or a whole quarter, depending on the day the safety case comes into force.

Item 2 of the table establishes that each subsequent instalment for a facility that is not a mobile facility is due and payable 1 month in advance of the whole quarter to which the levy relates, or the date established by item 1, if later.

Items 3 and 4 of the table establish that each instalment of the safety case levy for a mobile facility is due and payable 30 days after the Safety Authority notifies the operator that the levy is due and payable.

Therefore the levy for a facility that is not mobile is generally due and payable in advance, whilst the levy for a facility that is mobile is due and payable in arrears. Mobile facilities operate intermittently, and hence if their levy instalments were due and payable in advance many adjustments might need subsequently to be made. As levies for mobile facilities are a small proportion of the total to be collected by the Safety Authority, it is considered preferable to minimise the administration burden.

Regulation 32 - Notifying when safety case levy is due and payable (PSL Act)

This regulation determines when the Safety Authority will notify each operator when the levies are due and payable.

Item 1 of the table under subregulation 32(1) establishes that notice of each instalment of the first year's safety case levy for a facility that is not a mobile facility is to be given when the Safety Authority first notifies the operator of acceptance of the safety case.

Item 2 of the table establishes that notice of each instalment of each subsequent year's safety case levy for a facility, that is not a mobile facility, is to be given on or before 30 November of the previous year, if the safety case was in force before 30 November. Item 2 also establishes that if the safety case came into force after 30 November in the previous year the latter of 30 November or the date established by item 1 is the date of notice.

Items 3 and 4 of the table establish that notice of the amount and due date of each instalment of the safety case levy for a mobile facility is to be given by the end of the month following the end of each quarter.

Subregulation 32(2) clarifies that a notification is valid even if it is late and, in the event of a late notification of levy payable in respect of a mobile facility, levy is due 30 days after the notice is given.

Regulation 33 - Remitting part of safety case levy

This regulation establishes processes for remitting part of a safety case levy for mobile facilities.

Paragraph 33(1) (a) provides that a mobile facility (ie a type of facility listed in Schedule 2) is declared to be a facility that operates on an intermittent basis. This applies the power in section 150YS of the PSL Act to make regulations providing for the remittal of part of an amount of safety case levy where a facility in fact only operates for a part of a year.

Paragraph 33(1) (b) then provides that the Safety Authority may remit part of an amount of a safety case levy for mobile facilities in accordance with this regulation. Remissions of 'facility amount' and of 'SMS amount' are worked out separately, as the basis of the remission is slightly different.

Subregulation 33(2) provides for a remission of facility amount for a quarter according to the number of days in the quarter that the facility was not operated in Safety Authority waters.

Subregulation 33(3) provides that a remission of facility amount must not result in the facility amount payable in respect of the facility being less than 2 whole quarter amounts in any rolling 4-quarter period (taking into account levy payable under Part 4 and Part 5 of these Regulations). That is, the minimum facility amount is two whole quarter amounts in any 12 month period.

Subregulation 33(4) provides for a remission of SMS amount for a quarter according to the number of days in the quarter that no facility of the operator was operated in Safety Authority waters. Because only one SMS amount is paid by an operator in any year, it is not appropriate to remit the SMS amount if the operator still has a facility in operation.

Subregulation 33(5) provides that a remission of SMS amount must not result in the SMS amount payable in respect of the facility being less than 2 quarterly instalments in any rolling 4-quarter period (taking into account levy payable under Part 4 and Part 5 of these Regulations). That is, the minimum SMS amount payable by an operator is two quarterly instalments in any 12 month period.

Regulation 34 - Adjustment of amount of instalments

This regulation establishes mechanisms to adjust the amount of the instalments of levy to take account of operations at a facility that affect the amount of levy that is payable. These mechanisms are in addition to the provisions for remittals under regulation 33.

Subregulation 34(1) establishes three sets of circumstances where this regulation applies. The first (paragraph (a)) is if the operator newly informs the Safety Authority about operations at the facility that may affect the facility rating. The second (paragraph (b)) is if the operator amends previous information to the Safety Authority about operations at the facility that may affect the facility rating. The third (paragraph (c)) is if the Safety Authority becomes aware by other means that operations at the facility may affect the facility rating.

Subregulation 34(2) requires the Safety Authority to increase or decrease the subsequent instalment or instalments to take account of the nature of the operations at the facility. However, subregulation 34(3) establishes that an increase or decrease cannot be made unless the Safety Authority gives notice at least 14 days prior to the due date of an affected instalment.

Regulation 35 - Operator of variable-rating facility must keep Safety Authority informed about operations

This regulation relates to the provisions of regulation 34, and requires the operator of a variable rating facility to keep the Safety Authority informed about the operations at the facility, as they may affect the rating.

PART 6 - PIPELINE SAFETY MANAGEMENT PLAN LEVY - COMMONWEALTH WATERS

Division 1 - Preliminary

Regulation 36 - Definitions for Part 6

The regulation provides definitions for particular terms relevant to Commonwealth waters and this Part.

Designated Authority is defined as having the same meaning as in the PSL Act.

licensee of the pipeline licence means the holder of the pipeline licence within the meaning of section 9 of the OPSL Act.

major revision, in relation to a pipeline safety management plan, means a revision other than a minor revision.

minor revision, in relation to a pipeline safety management plan, means a revision that is treated as a minor revision under regulation 38.

pipeline has the same meaning as in section 9 of the OPSL Act.

pipeline management plan has the same meaning as in the *Petroleum (Submerged Lands) (Pipelines) Regulations 2001*.

pipeline safety management plan has the same meaning as in the *Petroleum (Submerged Lands) (Pipelines) Regulations 2001*.

pipeline safety management plan in force in relation to a pipeline has the same meaning as in section 9 of the OPSL Act.

The Note clarifies that the OPSL Act imposes the pipeline safety management plan levy as an annual levy.

Regulation 37 - When pipeline safety management plan and revisions come into force

This regulation clarifies when a pipeline safety management plan is taken to come into force, for the purposes of this Part. A pipeline safety management plan is taken to come into force when the Designated Authority accepts the pipeline management plan for the pipeline. A revision to a pipeline safety management plan is taken to come into force when the Designated Authority accepts the corresponding revision to the pipeline management plan for the pipeline.

Note: The pipeline safety management plan is not a separate document, but comprises those parts of the pipeline management plan that relate to health and safety at the relevant pipeline. Further, whilst the Safety Authority assesses the pipeline safety management plan, the only formally notified acceptance occurs when the Designated Authority accepts the pipeline management plan.

Regulation 38 - Minor revisions

This regulation establishes mechanisms whereby the Safety Authority may determine that a revision to a pipeline safety management plan is a minor revision, in which case the amount of the levy for that revision is zero (see subregulation 39(1)).

Subregulation 38(1) provides that the Safety Authority may make such a determination, in writing. Subregulation 38(2) provides that this may occur with or without the pipeline licensee making a request.

Subregulation 38(3) requires the Safety Authority, if it has made a determination under this regulation, to notify the pipeline licensee in writing.

Subregulation 38(4) provides that, if the Safety Authority refuses to make a determination where the pipeline licensee has made a request for a determination, the Safety Authority is required to notify the licensee of the decision and the reasons for it. The subregulation also makes provision for review of a refusal to make a determination where the decision to refuse was made by a delegate of the CEO. In that case, the notice must state that the licensee may apply for a review of the decision by the CEO of the Safety Authority.

Subregulation 38(5) requires the CEO to review the decision as soon as practicable, notify the licensee of the outcome and, if the outcome is still a refusal, notify the licensee of the reasons.

Division 2 - Working out pipeline safety management plan levy

Regulation 39 - Amount of pipeline safety management plan levy

This regulation establishes the amount of the pipeline safety management plan levy for each pipeline in relation to which a pipeline safety management plan is in force.

Note that, although the OPSL Act establishes that the pipeline safety management plan levy is an annual levy, the greater part of the Safety Authority's regulatory effort for pipelines will be in initial assessments of pipeline safety management plans and assessments of revisions to plans. Therefore the annual levy is to be paid only for those years where a significant assessment is necessary.

Subregulation 39(1) with Table A provides that, for those years when the pipeline safety management plan is already in force in relation to a pipeline at the start of the relevant year, levy is payable only if there was a major revision in the previous year. If the pipeline safety management plan was not in force at the start of the year (ie it came into force for the pipeline during the year) then levy is payable. In either case, the amount of the levy is the amount given by Table B.

Table B provides that the amount is \$15,000 for a pipeline of less than 100 km not connected to any sub-sea development, is \$30,000 for a pipeline of less than 100 km that is connected to a sub-sea development, and is \$50,000 for all pipelines of 100km or more in notional length. Greater regulatory effort is required for longer (and hence more complex) pipelines, or for pipelines connected to sub-sea developments.

Subregulation 39(2) explains what the 'notional length' of a pipeline is, for Table B. Where a pipeline is located in two or more jurisdictions, the notional length is as provided in regulation 4 or 5. Otherwise, it is the length of the pipeline.

Division 3 - Paying pipeline safety management plan levy

Regulation 40 - When pipeline safety management plan levy is due and payable (PSL Act)

This regulation determines when the pipeline safety management plan levy is due and payable.

Item 1 of the table under subregulation 40(2) applies where the plan is in force at the start of a year. (Note: levy is only payable if there was a major revision in the previous year.) The item establishes that the levy is due and payable on the first working day after 1 January, or 60 days after the last major revision came into force, whichever is later.

Item 2 of the table applies when a plan first comes into force after 1 January in a year. The item establishes that the levy for that year is due and payable 60 days after the plan comes into force.

Therefore the levy for a pipeline is always paid in arrears, potentially up to 1 year in arrears when the levy relates to a revision to a pipeline safety management plan. As levies for pipelines are a small proportion of the total to be collected by the Safety Authority, this is considered acceptable.

Regulation 41 - Notifying when pipeline safety management plan levy is due and payable (PSL Act)

This regulation determines when the Safety Authority will notify when the pipeline safety management plan levy is due and payable.

Regulation 41 requires the Safety Authority to notify the pipeline licensee of the amount of the levy and its due date within 30 days of a pipeline safety management plan or a major revision to a pipeline safety management plan coming into force.

PART 7 - PIPELINE SAFETY MANAGEMENT PLAN LEVY - DESIGNATED COASTAL WATERS

Part 7 makes provision for the same matters as Part 6, but in relation to coastal State/ Northern Territory waters.

Division 1 - Preliminary

Regulation 42 - Definitions for Part 7

The regulation provides definitions for particular terms relevant to State and Northern Territory coastal waters and this Part.

licensee of the pipeline licence means the holder of the pipeline licence within the meaning of section 10 of the OPSL Act.

major revision, in relation to a pipeline safety management plan, means a revision other than a minor revision.

minor revision, in relation to a pipeline safety management plan, means a revision that is treated as a minor revision under regulation 44.

pipeline has the same meaning as in section 10 of the OPSL Act.

pipeline safety management plan in force in relation to a pipeline has the same meaning as in section 10 of the OPSL Act.

responsible Minister means:

(a) the responsible Northern Territory Minister within the meaning of Part IIIC of the PSL Act; or

(b) the responsible State Minister within the meaning of Part IIIC of the PSL Act.

The Note clarifies that the OPSL Act imposes the pipeline safety management plan levy as an annual levy.

Subregulation 42(2) provides that the terms *pipeline management plan* and *pipeline safety management plan* have the same meanings as in the regulations of the relevant State or the Northern Territory that correspond to the Commonwealth *Petroleum (Submerged Lands) (Pipelines) Regulations 2001*.

Regulation 43 - When pipeline safety management plan and revisions come into force

This regulation clarifies when a pipeline safety management plan is taken to come into force, for the purposes of this Part. A pipeline safety management plan is taken to come into force when the Designated Authority accepts the pipeline management plan for the pipeline. A revision to a pipeline safety management plan is taken to come into force when the Designated Authority accepts the corresponding revision to the pipeline management plan for the pipeline.

Note: The pipeline safety management plan is not a separate document, but comprises those parts of the pipeline management plan that relate to health and safety at the relevant pipeline. Further, whilst the Safety Authority assesses the pipeline safety management plan, the only formally notified acceptance occurs when the Designated Authority accepts the pipeline management plan.

Regulation 44 - Minor revisions

This regulation establishes mechanisms whereby the Safety Authority may determine that a revision to a pipeline safety management plan is a minor revision, in which case the amount of the levy for that revision is zero (see subregulation 45(1)).

Subregulation 44(1) provides that the Safety Authority may make such a determination, in writing. Subregulation 44(2) provides that this may occur with or without the pipeline licensee making a request.

Subregulation 44(3) requires the Safety Authority, if it has made a determination under this regulation, to notify the pipeline licensee in writing.

Subregulation 44(4) provides that, if the Safety Authority refuses to make a determination where the pipeline licensee has made a request for a determination, the Safety Authority is required to notify the licensee of the decision and the reasons for it. The subregulation also makes provision for review of a refusal to make a determination where the decision to refuse was made by a delegate of the CEO. In that case, the notice must state that the licensee may apply for a review of the decision by the CEO of the Safety Authority.

Subregulation 44(5) requires the CEO to review the decision as soon as practicable, notify the licensee of the outcome and, if the outcome is still a refusal, notify the licensee of the reasons.

Division 2 - Working out pipeline safety management plan levy

Regulation 45 - Amount of pipeline safety management plan levy

This regulation establishes the amount of the pipeline safety management plan levy for each pipeline in relation to which a pipeline safety management plan is in force.

Note that, although the OPSL Act establishes that the pipeline safety management plan levy is an annual levy, the greater part of the Safety Authority's regulatory effort for pipelines will be in initial assessments of pipeline safety management plans and assessments of revisions to plans. Therefore the annual levy is to be paid only for those years where a significant assessment is necessary.

Subregulation 45(1) with Table A provides that, for those years when the pipeline safety management plan is already in force in relation to a pipeline at the start of the relevant year, levy is payable only if there was a major revision in the previous year. If the pipeline safety management plan was not in force at the start of the year (ie it came into force for the pipeline during the year) then levy is payable. In either case, the amount of the levy is the amount given by Table B.

Table B provides that the amount is \$15,000 for a pipeline of less than 100 km not connected to any sub-sea development, is \$30,000 for a pipeline of less than 100 km that is connected to a sub-sea development, and \$50,000 for all pipelines of 100 km or more in notional length. Greater regulatory effort is required for longer (and hence more complex) pipelines, or for pipelines connected to sub-sea developments.

Subregulation 45(2) explains what the 'notional length' of a pipeline is, for Table B. Where a pipeline is located in two or more jurisdictions, the notional length is as provided in regulation 4 or 5. Otherwise, it is the length of the pipeline.

Division 3 - Paying pipeline safety management plan levy

Regulation 46 - When pipeline safety management plan levy is due and payable (PSL Act)

This regulation determines when the pipeline safety management plan levy is due and payable.

Item 1 of the table under subregulation 46(2) applies where the plan is in force at the start of a year. (Note: levy is only payable if there was a major revision in the previous year.) The item establishes that the levy is due and payable on the first working day after 1 January, or 60 days after the last major revision came into force, whichever is later.

Item 2 of the table applies when a plan first comes into force after 1 January in a year. The item establishes that the levy for that year is due and payable 60 days after the plan comes into force.

Therefore the levy for a pipeline is always paid in arrears, potentially up to 1 year in arrears when the levy relates to a revision to a pipeline safety management plan. As levies for pipelines are a small proportion of the total to be collected by the Safety Authority, this is considered acceptable.

Regulation 47 - Notifying when pipeline safety management plan levy is due and payable (PSL Act)

This regulation determines when the Safety Authority will notify when the pipeline safety management plan levy is due and payable.

Regulation 47 requires the Safety Authority to notify the pipeline licensee of the amount of the levy and its due date within 30 days of a pipeline safety management plan or a major revision to a pipeline safety management plan coming into force.

PART 8 - FEES FOR SERVICES PROVIDED BY THE SAFETY AUTHORITY

Regulation 48 - Fee for assessing safety case - Commonwealth Waters (PSL Act)

This regulation provides for a fee to be charged for the assessment of a safety case for a proposed facility that is being constructed at a place outside Safety Authority waters and that is proposed to be located in Commonwealth waters.

There is no legislative requirement for a safety case to be assessed at this stage, prior to entry into Safety Authority waters. However, an operator constructing a facility overseas may, for commercial reasons, want a safety case accepted by the Authority. The amount of the fee is not to exceed the expenses incurred by the Authority in carrying out the assessment. The fee is payable by the operator of the proposed facility when the safety case is submitted to the safety authority.

Regulation 49 - Fee for assessing safety case - designated coastal waters (PSL Act)

This regulation provides for a fee to be charged for the assessment of a safety case for a proposed facility that is being constructed at a place outside Safety Authority waters and that is proposed to be located in State or Northern Territory designated coastal waters. Apart from the proposed location of the facility, this negotiation mirrors regulation 48.

PART 9 - COST RECOVERY ARRANGEMENTS

Regulation 50 - Review of cost-recovery arrangements - periodic reviews

This regulation establishes that the CEO must conduct periodic reviews of the working of the cost-recovery arrangements for the Safety Authority, including a comparison of the fees and levies collected with the regulatory activities undertaken.

Regulation 51 - Review of cost-recovery arrangements - financial report

This regulation establishes that the CEO must prepare annual financial reports that assess the cost-effectiveness of the Safety Authority's operations, and have these reports independently audited. It further establishes that copies of the reports must be given to the following persons at least 1 month before each meeting that is held in accordance with regulation 52:

- * the Australia Petroleum Production and Exploration Association Limited;
- * each person that has been levied under the Regulations during the financial year; and
- * any other person the CEO thinks appropriate.

Regulation 52 - Meetings about operations of Safety Authority

This regulation establishes that the CEO must hold annual meetings with representatives of the offshore petroleum industry, to discuss the cost-effectiveness of the Safety Authority's operations. At those meetings the CEO must present information on the costs, budget projections and cost-effectiveness of the Safety Authority.

SCHEDULE 1 - FACILITY AMOUNT AND SMS AMOUNT

This Schedule provides the basis for calculating the amount of the safety case levy. It applies to the calculation of levy both under Part 4 and Part 5. Terms that are defined in Part 4 or Part 5 are used in the Schedule in the relevant sense (or, where appropriate, in both senses).

Part 1 - Facility amount

This Part provides the basis for calculating the facility amount.

Item 1.1 establishes that the facility amount is first worked out when a safety case for the facility is first accepted by the Safety Authority, and is then worked out annually.

As mobile facilities can move from jurisdiction to jurisdiction the note clarifies that, for levy purposes, the facility amount is only worked out for the first jurisdiction. (The facility amount for subsequent jurisdictions is zero.)

Item 1.2 establishes that the facility amount for the year in which the safety case is first accepted is the sum of all relevant whole and part quarter amounts. In effect, the facility amount is calculated pro rata for the portion of the year remaining on the date the safety case is accepted. That is, it is calculated on the basis that the safety case will be in force for the remainder of the year.

Item 1.3 establishes that the facility amount for subsequent years is the sum of all four whole quarter amounts. That is, it is calculated on the basis that the safety case will be in force for the whole of the year.

Part 2 - Factors used to work out facility amount

Division 1 - Quarter amounts

Item 2.1 establishes that the whole quarter amount of the levy is worked out by calculating the annual levy (by multiplying the facility rating (item 2.3) by the unit value (item 2.6)) and dividing by 4.

Item 2.2 provides for calculating the part quarter amount. The part quarter amount is applicable where the safety case comes into force for a facility part-way through a quarter. The item provides that the part quarter amount is worked out by calculating the annual levy (by multiplying the facility rating (item 2.3) by the unit value (item 2.6)), and then multiplying this by the number of days in the quarter for which the safety case is in force and dividing the result by 365.

Division 2 - Applicable facility rating

Item 2.3 establishes the facility rating for each type of facility. The rating for a facility is that shown in the table for the description that applies to the facility. Higher ratings apply to larger and more complex facilities, i.e. those that will require greater regulatory effort by the Safety Authority.

Item 2.4 provides that, for a variable rating facility (item 2 in the table in Item 2.3), the rating used in the calculation of the quarter amount or part quarter amount is that which applies for the greater number of days in the period. The higher rating is used if the two ratings apply for equal number of days.

Item 2.5 clarifies that the most accurate description in the table is used, in cases where more than one description might appear to apply.

The note clarifies that if a facility changes its description and hence rating (see table in item 2.3) then the calculation of the safety case levy will need to be adjusted.

Division 3 - Unit value

Item 2.6 establishes that the unit value is \$25,000.

Part 3 - SMS amount

This Part provides the basis for setting the SMS amount.

An operator will pay only 1 SMS amount in relation to any year. This is the case:

- (i) whether the operator has a safety case in force at the start of the year or whether the operator first has a safety case come into force during the year; and
- (ii) regardless of the number of safety cases the operator has in force or the number of facilities covered by those safety cases; and
- (iii) regardless of whether the operator has safety cases in force under the law of one or more of the Safety Authority jurisdictions.

The SMS amount is worked out using the table in item 3.3 and the rules in item 3.4.

The rate of SMS amount that is applicable is fixed at the first time in any year that an item of the table applies to a safety case of the operator. The rate does not change subsequently in that year.

Items 1 and 2 of the table apply if the operator has one or more safety cases in force at the start of the year. If any facility covered by that safety case, or one of those safety cases, is a facility other than a mobile facility, the SMS amount is \$125,000. Otherwise, (ie if only mobile facilities are covered) the SMS amount is \$80,000.

Items 3 and 4 of the table apply if the operator first has one or more safety cases come into force after the start of the year. If, at that time, any facility covered by that safety case, or one of those safety cases, is a facility other than a mobile facility, the SMS amount is \$125,000. Otherwise, (ie if only mobile facilities are covered) the SMS amount is \$80,000.

The Safety Authority will, for administrative convenience, identify a safety case in relation to which the SMS amount is to be paid. This will allow the Safety Authority and the operator to work out the appropriate amounts of levy to be paid per quarter. This arrangement does not have any legal effect, however. If amounts of safety case levy are remitted in relation to one or more mobile facilities of the operator that are not operated for part of the year, there will only be remission of the SMS amount in respect of periods when no facility of that operator (under any safety case) is in operation.

SCHEDULE 2 - MOBILE FACILITIES

This Schedule establishes which types of facilities are mobile facilities, and are treated as facilities that operate intermittently for the purpose of the safety case levy. These facilities are those that meet any of the following descriptions:

- * mobile offshore drilling unit or drill-ship;
- * pipe-lay barge or construction/transport; and
- * accommodation barge.