



Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2005 (No. 1)¹

Select Legislative Instrument 2005 No. 318

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Petroleum (Submerged Lands) Act 1967*.

Dated 15 December 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

IAN MACFARLANE
Minister for Industry, Tourism and Resources

1 Name of Regulations

These Regulations are the *Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2005 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*

Schedule 1 amends the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*.

4 Transitional

The amendments made by Schedule 1 apply in relation to an environment plan that, on or after the commencement of these Regulations, is submitted:

- (a) to the Designated Authority under regulation 9 of the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*; or
- (b) for revision under Division 2.4 of the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 4 (1)

omit

In these Regulations:

insert

In these Regulations, unless the contrary intention appears:

[2] Subregulation 4 (1), before definition of *Act*

insert

accepted, in relation to an environment plan, means a plan accepted by the Designated Authority under regulation 11.

[3] Subregulation 4 (1), definitions of ***consent to construct and install, consent to use, environment and environment plan in force for the activity***

substitute

environment means:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the heritage value of places;
and includes
- (e) the social, economic and cultural features of the matters mentioned in paragraphs (a), (b), (c) and (d).

environmental impact means any change to the environment, whether adverse or beneficial, that wholly or partially results from a petroleum activity of an operator.

environmental performance means the performance of an operator in relation to the environmental performance objectives and standards mentioned in an environment plan accepted under these Regulations.

environmental performance objective means the goals of an operator that are mentioned in an environment plan accepted under these Regulations.

environmental performance standard means a statement of performance required of a system, an item of equipment, a person or a procedure, that is used as a basis for managing environmental risk, for the duration of the activity in accordance with the objectives of the regulations, as set out in an environment plan accepted under these Regulations.

environment plan, in relation to an operator of a petroleum activity, means an environment plan submitted by the operator that is:

- (a) accepted and revised from time to time under these Regulations;

but does not include:

- (b) if the environment plan is accepted in part — that part of the plan that is not accepted; or
- (c) an environment plan for which the acceptance has been withdrawn.

[4] Subregulation 4 (1), definition of *operator*

substitute

operator, for a petroleum activity, means:

- (a) if there is a person recorded by the Designated Authority as the operator of the activity under regulation 35 — that person; or
- (b) in any other case:
 - (i) if there is a petroleum instrument — the person responsible to the petroleum instrument holder for the overall management of operations of the activity (whether or not the operations have commenced); or
 - (ii) if there is no petroleum instrument — the person performing the petroleum activity.

[5] Subregulation 4 (1), definition of *petroleum activity*

substitute

***petroleum activity* or *activity* means:**

- (a) any operations or works in an adjacent area carried out under a petroleum instrument, other authority or consent under the Act or the regulations; and
- (b) any activity relating to petroleum exploration or development which may have an impact on the environment;

and includes, for the avoidance of doubt, any of the following operations:

- (c) seismic or other surveys;
- (d) drilling;
- (e) construction and installation of a facility;
- (f) operation of a facility;
- (g) significant modification of a facility;
- (h) decommissioning, dismantling or removing a facility;
- (i) construction and installation of a pipeline;
- (j) operation of a pipeline;
- (k) significant modification of a pipeline;
- (l) decommissioning, dismantling or removing a pipeline;
- (m) storage, processing or transport of petroleum.

[6] Subregulation 4 (1), definition of *reportable incident*

substitute

recordable incident, for an operator of a petroleum activity, means an incident arising from the activity that:

- (a) breaches a performance objective or standard in the environment plan that applies to the activity; and
- (b) is not a reportable incident.

reportable incident, for an operator of a petroleum activity, means an incident mentioned in the environment plan for the activity that has caused, or has the potential to result in, moderate to catastrophic environmental consequences as categorised by the risk assessment process undertaken as part of the preparation of the environment plan.

[7] Subregulation 6 (2), including the note

substitute

- (2) This regulation does not affect any other requirement under the regulations for a consent to construct or install, or a consent to use, a facility.

Note The term ‘the regulations’ is defined in regulation 4 to mean ‘..regulations (including these Regulations) made under the Act’.

[8] Regulation 8, heading

substitute

8 Operations must not continue if new or increased environmental risk identified

[9] After subregulation 9 (2)

insert

- (3) An environment plan:
- (a) must be in writing, or in a form accepted by the Designated Authority; and
 - (b) if the Designated Authority approves — may relate to a specified activity in one or more identified locations specified in the plan.

[10] Subregulation 10 (1)

omit each mention of

28 days

insert

30 days

[11] Paragraph 11 (1) (a)

omit

activity; and

insert

activity or proposed use; and

[12] Paragraph 11 (1) (f)

substitute

(f) for the requirement mentioned in paragraph 16 (b) — demonstrates that there has been an appropriate level of consultation with authorities, persons and organisations; and

(g) complies with the Act and the regulations.

[13] Subregulation 11 (6), after the note

insert

(7) Within 10 days after receiving a notification that the Designated Authority has accepted an environment plan under paragraph (5) (a), the operator must submit a summary of the plan to the Designated Authority for public disclosure.

(8) A summary mentioned in subregulation (7):

(a) must include the following material from the environment plan:

(i) coordinates of the petroleum activity;

(ii) a description of the receiving environment;

(iii) a description of the action;

- (iv) details of major environmental hazards and controls;
 - (v) a summary of the management approach;
 - (vi) details of consultation already undertaken, and plans for ongoing consultation;
 - (vii) contact details of the operator's nominated liaison personnel for the activity; and
- (b) must be to the satisfaction of the Designated Authority.

[14] Paragraph 13 (1) (c)

omit

proposed operations

insert

operational details of the activity

[15] Paragraph 13 (2) (b)

omit

identify

insert

include details of

[16] Subregulations 13 (3) and (4)

substitute

Description of environmental impacts and risks

- (3) The environment plan must include:
- (a) details of the environmental impacts and risks for the activity; and
 - (b) an evaluation of all the impacts and risks.
- (3A) For the avoidance of doubt, the evaluation mentioned in paragraph (3) (b) must evaluate all the significant impacts and risks arising directly or indirectly from:
- (a) all operations of the activity, including construction; and

-
- (b) potential emergency conditions, whether resulting from accident or any other reason.

Environmental performance objectives and standards

- (4) The environment plan must include environmental performance objectives, environmental performance standards and measurement criteria that:
- (a) address legislative and other controls that manage environmental features of the activity; and
 - (b) define the objectives, and set the standards, against which performance by the operator in protecting the environment is to be measured; and
 - (c) include measurement criteria for determining whether the objectives and standards have been met.

Environmental requirements

- (5) The environment plan must contain a list of all legal, environmental and other requirements that apply to the activity.

[17] Subregulation 14 (3)

substitute

- (3) The implementation strategy must identify the specific systems, practices and procedures to be used to ensure that the environmental impacts and risks of the activity are reduced to as low as reasonably practicable and that the environmental performance objectives and standards in the environment plan are met.

[18] Subregulation 14 (5)

omit

environment and has the appropriate skills

insert

environment plan and has the appropriate competencies

[19] Subregulation 14 (6)

omit

audit

insert

audit, management of non-conformance

[20] Subregulation 14 (8)

omit

must

insert

must establish and

[21] After subregulation 14 (8)

insert

(8A) The response arrangements in the manual mentioned in subregulation (8) must be tested:

- (a) when they are introduced; and
- (b) when they are significantly amended; and
- (c) not later than 12 months after the most recent test.

[22] Paragraph 16 (b)

omit

any consultations

insert

all consultations

[23] Paragraph 16 (c)

substitute

(c) details of all reportable incidents in relation to the proposed activity.

[24] Subregulation 24 (2)

omit

1 month's

insert

30 days

[25] Regulation 26

substitute

26 Notifying reportable incidents

- (1) The operator of an activity must notify a reportable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A notification under subregulation (1):

- (a) must be given to the Designated Authority; and
- (b) must be given as soon as practicable, and in any case not later than 2 hours after:
- (i) the first occurrence of the reportable incident; or
 - (ii) if the reportable incident was not detected by the operator at the time of the first occurrence — the time the operator becomes aware of the reportable incident; and
- (c) may be oral or in writing; and

- (d) must contain:
 - (i) all material facts and circumstances concerning the reportable incident that the operator knows or is able, by reasonable search or enquiry, to find out; and
 - (ii) any action taken to avoid or mitigate any adverse environment impacts of the reportable incident; and
 - (iii) the corrective action that has been taken, or is proposed to be taken, to prevent a similar reportable incident.

26A Written report of reportable incidents

- (1) The operator of an activity must submit a written report of a reportable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A written report under subregulation (1):
 - (a) must be given to the Designated Authority; and
 - (b) must be given as soon as practicable, and in any case:
 - (i) not later than 3 days after the first occurrence of the reportable incident; or
 - (ii) if the Designated Authority specifies, within 3 days after the first occurrence of the reportable incident, another period within which the report must be provided — within that period; and

-
- (c) must contain:
- (i) all material facts and circumstances concerning the reportable incident that the operator knows or is able, by reasonable search or enquiry, to find out; and
 - (ii) any action taken to avoid or mitigate any adverse environment impacts of the reportable incident; and
 - (iii) the corrective action that has been taken, or is proposed to be taken, to prevent a similar reportable incident.

26B Reporting recordable incidents

- (1) The operator of an activity must submit a written report of a recordable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A written report under subregulation (1):
- (a) must be given to the Designated Authority; and
 - (b) must relate to a calendar month; and
 - (c) must be given as soon as practicable after the end of the calendar month, and in any case not later than 15 days after the end of the calendar month; and
 - (d) must contain:
 - (i) a record of all recordable incidents that occurred during the calendar month; and

- (ii) all material facts and circumstances concerning the recordable incidents that the operator knows or is able, by reasonable search or enquiry, to find out; and
- (iii) any action taken to avoid or mitigate any adverse environment impacts of the recordable incidents; and
- (iv) the corrective action that has been taken, or is proposed to be taken, to prevent similar recordable incidents.

[26] Paragraph 27 (2) (f)

substitute

- (f) records and copies of reports mentioned in:
- (i) regulations 26 and 26A, relating to reportable incidents; and
 - (ii) regulation 26B, relating to recordable incidents.

[27] Regulation 29

substitute

29 Discharge of produced formation water

- (1) The operator of an activity must ensure that the concentration of petroleum in any produced formation water discharged into the sea as a result of operations for the activity is not greater than 30mg/L during each period of 24 hours (*specified concentration*).

Penalty: 40 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

-
- (3) Nothing in subregulation (1) affects an environmental performance standard, in an environment plan in force for the activity, for a concentration of petroleum in produced formation water discharged into the sea that is less than the specified concentration.
- (4) Subregulation (1) does not apply to an operator who:
- (a) has the consent in writing of the Designated Authority in accordance with subregulation (5) to exceed the specified concentration; and
 - (b) does not exceed any authorised concentration mentioned in the consent.
- (5) Consent under subregulation (4) may be given by the Designated Authority only if:
- (a) the discharge rate of produced formation water to be authorised by the consent is not greater than 0.5 megalitres per day; or
 - (b) the consent is to apply to a period not greater than 48 hours; or
 - (c) the Designated Authority is satisfied that the purpose of the discharge at the authorised concentration is for operational research that has the potential to improve environmental performance.
- (6) The Designated Authority must not give a consent under subregulation (4) unless the operator demonstrates, to the satisfaction of the Designated Authority, that the proposed activity will not result in:
- (a) the occurrence of any significant new environmental impact or risk; or
 - (b) a significant increase in any existing environmental impact or risk.

29A Tests and reports of discharges of produced formation water

- (1) If produced formation water is discharged into the sea, the operator must:
 - (a) conduct an accepted test at regular intervals to assess the performance of the monitoring equipment; and
 - (b) record the test results.
- (2) At the request of the Designated Authority, the operator must produce for inspection the test results mentioned in subregulation (1).

Penalty: 40 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

[28] Regulation 30, definition of *contact details*

omit

address

insert

name and address

[29] Division 4.4

omit

[30] Further amendments

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 7 (3)	effect	impact
Subparagraph 8 (1) (a) (i)	effect	impact
Subparagraph 8 (1) (a) (ii)	effect	impact
Paragraph 8 (1) (b)	effect	impact

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 8 (2), note	effect	impact
Paragraph 11 (1) (b)	effects	impacts
Paragraph 11 (1) (c)	effects	impacts
Paragraph 13 (1) (d)	effects	impacts
Paragraph 17 (2) (b)	effect	impact

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.