

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 383

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Petroleum (Submerged Lands) (Management Of Environment) Amendment Regulations 2009 (No. 1)

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

GENERAL OUTLINE

The regulations are made in accordance with section 781 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act).

The Act provides the legal framework for the exploration for and recovery of petroleum (petroleum activities) and for the injection and storage of greenhouse gas substances (greenhouse gas activities) in offshore areas. The Act is administered jointly by the Commonwealth Government and state and Northern Territory governments and provides for a range of administrative decisions to be made in relation to petroleum and greenhouse gas (GHG) titles and permits (relating to exploration, retention, production, infrastructure, pipelines, assessment, holding, injection and search). Matters relating to GHG storage were added to the Act on 21 November 2008 by the *Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008*.

The purpose of these amendments to the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (the Regulations) is to include greenhouse gas (GHG) activities as well as petroleum activities in the Regulations. The petroleum and GHG activities undertaken under these regulations are essentially the same in practice, and so the proposed Regulations would effectively be dual-purpose. The risk factors of the activities may be different, however the objective and non-prescriptive nature of the Offshore Act and the proposed Regulations means that this would not impact on the substance of the Principal Regulations.

Under the Act, the responsible Commonwealth Minister and the relevant state or Northern Territory minister are the Joint Authority regulating offshore petroleum activities in Commonwealth waters. The Designated Authority, the responsible state or Northern Territory minister, is responsible for the day-to-day administration of the Act. The Commonwealth Minister has sole responsibility for GHG activities in Commonwealth waters.

To give effect to this, the Regulations are amended to refer to 'the Regulator' throughout, in place of the term 'Designated Authority', and a number of definitions are also inserted or amended to either include GHG activities or to distinguish between petroleum activities and titles and GHG activities and titles.

The opportunity has also been taken to update the Principal Regulations to reflect the terminology used in the Act as well as incorporating modern drafting practices.

Details of the proposed Regulations are included in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

FINANCIAL IMPACT STATEMENT

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

REGULATORY IMPACT STATEMENT

These amendments do not pose any new regulatory burden on the petroleum industry. The regulatory impact on GHG activities was considered during assessment of the Act, and it was determined that dual-purpose regulations would have the least regulatory impact.

ATTACHMENT

NOTES ON INDIVIDUAL CLAUSES

Regulation 1 - Name of Regulations

This regulation provides that the title of the Regulations is the *Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2009 (No. 1)*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

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

This regulation provides that the *Petroleum (Submerged Lands) (Management of Environment) Regulations* (the Regulations) are amended as set out in Schedule 1 to the Regulations.

Schedule 1 - Amendments**Item [1] – Regulation 1**

This item changes the name of the Regulations to the *Offshore Petroleum and Greenhouse Gas Storage Act (Environment) Regulations 1999* (the Regulations). This makes the Regulations consistent with the name of the parent Act and other regulations under the Act.

Item 2 – Regulation 3

This item expands the objective of the Regulations to include greenhouse gas activity, and redrafts the regulation to improve clarity by incorporating paragraphs.

Item 3 – Subregulation 4(1), definitions of *accepted*, *Act* and *activity*

This item substitutes the term ‘Designated Authority’ with ‘Regulator’ in the definition of ‘accepted’, to include greenhouse gas regulation by the Commonwealth Minister. It updates the reference to the Act by substituting the new name of the Act, and includes greenhouse gas activity in the definition of ‘activity’. The term ‘Regulator’ is amended under Item 6 below.

Item 4 – Subregulation 4(1), after definition of *facility*

Item 4 inserts a definition of ‘greenhouse gas activity’, ‘greenhouse gas instrument’ and ‘greenhouse gas instrument holder’. It also inserts a new definition of ‘instrument holder’ that includes both petroleum instruments and greenhouse gas instruments.

Item 5 – Subregulation 4(1), definitions of *operator*, *petroleum activity* or *activity* and *petroleum instrument*

Item 5 redefines ‘operator’ to include greenhouse gas activities. It also specifies what is included as a ‘petroleum activity’ and a ‘petroleum instrument’, and includes ‘infrastructure licence’ as a petroleum instrument.

Item 6 – Subregulation 4(1), definition of *reportable incident*

Item 6 inserts a definition of ‘Regulator’ as either the Designated Authority (for petroleum activities) or the responsible Commonwealth Minister (for greenhouse gas activities). It also amends the definition of ‘reportable incident’ to refer to environmental incidents more broadly, and removes the link to an environment plan to ensure that the Regulator is informed of environmental incidents, regardless of whether they are included in an environment plan.

Item 7 – Subregulation 4(2), notes 1 and 2

This item provides an updated reference to definitions in the Act, and includes greenhouse gas activities and infrastructure licences as words and expressions used in the Act.

Item 8 – Subregulation 6(1), note 1

This item removes the word ‘petroleum’ to ensure that the regulation applies to greenhouse gas activities as well as petroleum activities.

Item 9 – Subregulation 9(1)

This item replaces the term ‘adjacent’ with ‘offshore’ to be consistent with the terminology of the Act.

Item 10 – Subregulation 11(4)

This item replaces the term ‘designated Authority’ with ‘Regulator’ to encompass regulation of both greenhouse gas and petroleum activities.

Item 11 – Paragraph 11(6)(c)

This item replaces the term ‘adjacent’ with ‘offshore’ to be consistent with the terminology of the Act.

Item 12 – Paragraph 11(6)(c)

This item provides updated references to the relevant sections in the Act.

Item 13 – Sub-paragraph 11(8)(a)(i)

This item omits use of the term ‘petroleum’ in reference to activities and instrument holders in order to expand the application of the regulations to greenhouse gas activities.

Item 14 – Subregulation 13(5), including the subheading

This item clarifies the intent of the regulation, that is, that the environment plan include a description of relevant requirements rather than a list of all legal, environment and other requirements that apply to the activity.

Item 15 – Subregulation 14(3)

This item clarifies the requirement to address continuous improvement of environmental management in the implementation strategy contained in the environment plan. This requires operators to reduce impacts and risks throughout the operation, not only when an implementation strategy or environment plan is revised.

Item 16 – Subregulation 14(8)

This item removes reference to the emergency response manual (which is addressed in the proposed *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*) and substitutes a requirement for an oil spill contingency plan. The proposed new subregulation 8AA requires the plan to be kept up-to-date and to include emergency response arrangements.

Item 17 – Subregulation 14(8A)

This item is consequential to the amendment proposed in item 15 above. It removes reference to the emergency response manual and replaces it with reference to the oil spill contingency plan.

Item 18 – Paragraph 14(8A)(c)

This item makes a grammatical change to allow the changes in item 19 below to be made, by adding the word ‘and’ to incorporate the additional clauses.

Item 19 – After paragraph 14(8A)(c)

This provides for testing of the oil spill contingency plan to be undertaken when a new location, a new facility or a new structure is added to the environment plan.

Item 20 – Paragraph 17(2)(a)

This item omits use of the term ‘petroleum’ in reference to activities and instrument holders in order to expand the application of the regulations to greenhouse gas activities.

Item 21 – Paragraph 17(2)(b)

This item makes a grammatical change to allow the changes in item 22 below to be made, by adding the word ‘or’ to incorporate the additional clauses.

Item 22 – After paragraph 17(2)(b)

This item inserts a new paragraph 17(12)(c) to include additional requirements that would trigger a revision of the environment plan. These requirements encompass a series of increases in existing environmental impacts or risks not provided for in the current environment plan.

Item 23 – Regulation 19(b)

This item allows revisions submitted under Regulation 17 and 18 (whereby a revision is required if there is a change, or proposed change, to circumstances or operations or on request by the Designated Authority), where they meet the requirements for a five-year revision, to ‘reset’ the five-year cycle. This means that an operator who undertakes a substantial revision to the environment plan close to the end of the five-year cycle, is not required to again revise the entire plan at the end of the cycle.

Item 24 – Regulation 21, heading

This item changes the heading of Regulation 21 from ‘Consideration of proposed revision’ to ‘Acceptance of a revised environment plan’ to ensure consistency with the heading of Regulation 11, ‘Acceptance of an environment plan’.

Item 25 – Paragraph 23(2)(a)

This item expands the coverage of the provision to include ‘instrument holder’, that is both petroleum and greenhouse gas instrument holders. It also clarifies that the authority which may give direction is the Regulator, and provides an updated reference to the relevant section in the Act.

Item 26 – Paragraph 23(3)(b)

This item replaces the term ‘adjacent’ with ‘offshore’ to be consistent with the terminology of the Act.

Item 27 – Paragraph 23(3)(b)

This item provides updated references to the relevant sections in the Act.

Item 28 – Paragraph 24(5)(a)

This item omits use of the term ‘petroleum’ in reference to activities and instrument holders in order to expand the application of the regulations to greenhouse gas activities.

Item 29 – Regulation 25

This item omits use of the term ‘petroleum’ in reference to activities and instrument holders in order to expand the application of the regulations to greenhouse gas activities.

Item 30 – Paragraph 28(2)(b)

This item provides updated references to the relevant sections in the Act.

Item 31 – Paragraph 28 (2)(c)

This item updates the scope of ‘inspector’ in accordance with the Act, by expanding the coverage of the provision to include greenhouse gas project inspector, petroleum project inspector and Greater Sunrise visiting inspector.

Item 32 - Subregulation 28(4)

This item updates the regulation to refer to the Regulator, greenhouse gas project inspector and petroleum project inspector, and updates the provision in line with current drafting practices by using subparagraphs.

Item 33 - Subregulation 29(1)

This item clarifies the requirement that operators limit the concentration of petroleum in produced formation water to not greater than an average of 30 milligrams per litre in any 24-hour period. This is consistent with current monitoring regimes.

Item 34 – Regulation 31

This item omits use of the term ‘petroleum’ in reference to activities and instrument holders in order to expand the application of the regulations to greenhouse gas activities.

Item 35 – Subregulation 33(1)

This item substitutes the words ‘a petroleum instrument holder’ with ‘an instrument holder’ to ensure that the regulation applies to greenhouse gas instrument holders as well as petroleum instrument holders.

Item 36 – Regulation 34

This item substitutes the words ‘a petroleum instrument holder’ with ‘an instrument holder’ to ensure that the regulation applies to greenhouse gas instrument holders as well as petroleum instrument holders.

Item 37 – Further amendments – an activity

This item identifies and removes each use of the term ‘a petroleum activity’ in the Regulations and replaces it with ‘activity’ in order to encompass greenhouse gas activities as well as petroleum activities.

Item 38 – Further amendments – Regulator

This item identifies and removes each use of the term ‘Designated Authority’ in the Regulations and replaces it with ‘Regulator’ in accordance with Regulation 4, to include regulation of both greenhouse gas activities by the Commonwealth Minister and petroleum activities by the Designated Authority.