

NOPSEMA



Nicholas Mavrias
Senior Claims Executive
+65 6506 2802
nicholas.mavrias@ctplc.com

The offshore oil and gas industry necessarily needs to comply with numerous regulations to manage the potential environmental impact of its operations. This article looks at one regulating body in Australia, and discusses the difficulties in complying with its requirements and the impact this could have on the industry in the current climate.

With the current repressed market for the offshore industry, many companies have had the unenviable task of taking drastic cost-cutting measures in order to remain in business. In such a market, one cannot lose sight of the importance of best operating practices, maintenance and safety, and the effect that cutbacks in these areas could have on the frequency and severity of incidents, and consequently on the environment. In spite of this, it is in the best interests of all players involved in the offshore oil and gas sector (oil majors, service providers, governments, etc) to ensure that regulatory mandates and directives do not impede the course of business. Overbearing regulations have the potential to put projects on hold, which, in the current climate, could lead to companies in financial constraints and jobs in jeopardy.

The situation in Australia

Australia has been hit hard by the downturn in the oil and gas industry. A number of projects have been delayed or put on hold as the prospective returns based on current oil prices do not justify the substantial financial investments. Despite the negative outlook, the country remains one of the most highly regulated jurisdictions. This position has come about through efforts to bring the country more effectively in line with other regimes throughout the world such as the USA, UK and the European Union, as well as a response to public outcries following the Montara incident in August 2009.

Inception of NOPSEMA

Since its inception in 2012, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has seen a far larger role/mandate than that of its predecessor NOPS. It now represents a single, independent regulatory body responsible for the safety, well integrity and environmental management of the offshore industry in Australia. The aim is to standardise Australia's offshore petroleum regulation 'to a quality, best practice model', while striking a balance between regulation and industry.

A key role of NOPSEMA in ensuring a uniform regulatory framework is to review, assess and approve the titleholder's safety case, well operations management plan, offshore project proposal and environmental plan. Without these approvals, operations cannot begin.

There are two key areas in which NOPSEMA may have fallen short, the Environmental Plan requirement and the Financial Assurance requirement.

Environmental Plan (EP)

The review and assessment of the EP has seen the most scrutiny among titleholders, as it is felt that the assessment standards have not always been applied consistently. While the guidelines seem straightforward, according to one industry leading titleholder, most of the scrutiny is of the approval of the

According to its own guidelines, NOPSEMA must accept an EP if it is reasonably satisfied that it:

- is appropriate for the nature and scale of the activity or proposed use
- demonstrates that the titleholder has carried out the required consultation and details any measures that the titleholder proposes to adopt because of the consultation
- demonstrates that the environmental impact and risks of the activity will be reduced to as low as reasonably practicable
- demonstrates that the environmental impact and risks of the activity will be of an acceptable level
- provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria
- includes an appropriate implementation strategy and monitoring, recording and reporting arrangements
- does not involve the activity or part of the activity, other than arrangements for responding to oil pollution or monitoring the effects of oil pollution, being conducted in any part of a declared World Heritage property¹.

1. [Streamlining Offshore Petroleum Environmental Approvals. Program Report, p24](#)
2. [2015 Operational Review Of The National Offshore Petroleum Safety And Environmental Management Authority, September 2015. Australian Government, Department of Industry and Science, p34](#)

initial EP for an activity and what the consequences might be, eg oil spill impact, etc. This has been echoed by an operational review of NOPSEMA over a period of three years (2012-2014), which recommended, among other things, to

'[...]review adequacy of guidance notes and improve communication of the assessment process to ensure that industry understands the importance of the nature and scale [of risks] within the risk assessment process'².

As such, there has been some emphasis on trying to reach a shared understanding of the nature and scale of risks, and clarify expectations of risk assessment processes for approvals; however, the results of the review are unknown at the present time.

Financial assurance

Another issue that has raised some concerns lately among titleholders involves the financial assurance provision found in the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No.2) Act 2013 (a product of The Commission of Inquiry into the Montara incident), which applies to all environmental plans or revised plans. In order to abide by said provision, it is stated that NOPSEMA must be satisfied that, should an incident occur, the titleholder will be able to draw on financial assurance to cover:

- costs, expenses and liabilities that may arise in connection with, or as a result of, the carrying out of the petroleum activity
- doing any other thing for the purposes of the petroleum activity
- complying with a requirement under the OPGGS Act, or a legislative instrument under the Act, in relation to the petroleum activity.

The financial assurance should be sufficient to cover the greatest reasonably credible costs and expenses of termination or control of the incident, and the greatest reasonably credible costs and expenses

of operational response measures required for containment, clean-up and remediation of the environment. NOPSEMA has endorsed a method to calculate an adequate level of financial assurance developed by the Australian Petroleum Production & Exploration Association (APPEA). Problems arise because some components of the calculation are fixed over time, while many fluctuate on the basis of the market factors used in the estimate. For example, the daily hire rate for a rig spread, or the premium a contractor assigns to drill the relief well at the time is in constant flux and is impossible to predict with a high level of accuracy.

When taking into consideration that periodic audits of the financial assurance provision would also involve reviewing insurance certificates and company financials in order to demonstrate that the titleholder would be in a position to meet its financial obligations until the insurances could pay out, it does make the financial assurance provision difficult to meet. In these instances, any uncertainty may lead to environmental plans being rejected and projects being delayed or put on hold.

Summary

There is no doubt that, since its inception, NOPSEMA has been a major contributor in reducing the impact of incidents in Australia by standardising the country's offshore petroleum regulation 'to a quality, best practice model'. In such difficult times for the offshore oil and gas sector, it is more important than ever to manage both environmental and commercial expectations adequately. There should be a concerted effort to ensure that both industry and government maintain clarity and transparency in their dealings so as to reach a mutually beneficial outcome. We are confident that with an open dialogue, this outcome can surely be achieved.