



Guideline

Facility definition includes an associated offshore place

1 Introduction and Scope

This guideline discusses the definition of *facility* and *associated offshore place* in the context of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and indicates the obligations for operators if their vessel or structure is a facility, or an associated offshore place as part of that facility.

2 Relevant Legislation

Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA), Schedule 3

Offshore Petroleum (Safety) Regulations

3 Clarification of Terms

3.1 'Facility'

Clause 3 of Schedule 3 to the OPGGSA indicates that a *facility* is a facility as defined by Schedule 3 Clause 4, and includes:

- A facility being constructed or installed; and
- An associated offshore place.

Clause 4 defines a *facility* as a vessel or structure (whether floating or fixed) whether or not it is capable of independent navigation, while the vessel or structure is located in Commonwealth waters and is being used, or is being prepared for use, at the site (Schedule 3, Clause 4) for the recovery, processing, storage, offloading of petroleum (Clause 4(1)(b)(i)). In accordance with Clause 4(4)(3), this includes:

- any wells, associated plant, equipment by which petroleum processed or stored at the vessel or structure is recovered; and
- any pipes from a well, or secondary lines associated with the facility.

Other activities that cause vessels or structures to be facilities include activity categories covered in Clause 4(1)(b)(ii)–(v), and include:

- Accommodation for persons working on another facility;
- Drilling or servicing a well for petroleum or work associated with drilling or servicing;
- Laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe; and
- Erection, dismantling or decommissioning of a facility.

The definition of *facility* was chosen on the basis that it included vessels and structures that present a safety risk to a significant number of people because of the presence of hydrocarbons [Explanatory Memorandum]. Categories of activities cause relevant vessels or structures to be defined as facilities and the Clause 4 definition lists these activities.

Clause 4(6) lists the following that are not facilities: off-take tankers; tugs or anchor handling vessels; vessels used for supplying facilities or for travelling to or from a facility; any vessel or structure declared by regulations not to be a facility.

Clause 4(7) notes that a vessel or structure is considered a facility not only when it is being used for offshore petroleum activities, but from the time it arrives at the site where it is to be used, until it

has ceased its operations and is in a navigable or other state that enables it to relocate from the site.

The main objective of the *facility* definition is to specify the physical boundaries of the regulatory regime. Hardware is drawn into the regime based on the type of activity and a general duty of care and a safety case/PSMP obligation are imposed to ensure risks are reduced as low as reasonably practicable.

3.2 'Associated Offshore Place'

As noted above a facility includes an associated offshore place.

Clause 3 of Schedule 3 to the OPGGSA defines *associated offshore place* as any offshore place near the facility where activities (including diving activities) relating to construction, operation, maintenance or decommissioning of the facility takes place.

The associated offshore place in relation to a facility can vary depending on the nature of the activities undertaken. Parties undertaking activities relating to the construction, operation, maintenance or decommissioning of the facility are in an associated offshore place and included in the facility.

4 Consequences of Schedule 3, Clause 3 facility definition

4.1 Obligations if a vessel is a facility

A vessel which is determined to be a *facility* is subject to obligations of Schedule 3 and applicable regulations (including the requirement to have a Safety Case covering the vessel and the activity).

In general, a *facility* comprises:

- Hardware: vessel or structure;
- Activity: recovering petroleum;
- Extension: wells, associated plant; and
- Associated offshore place: place near facility where related activities occur.

4.2 Obligations if a vessel is an associated offshore place

A vessel determined to be an *associated offshore place* is subject to obligations of Schedule 3 and applicable regulations, including the existing (host) facility safety case. If the vessel and activity are not covered by the existing safety case, a revision to the host safety case will be required.

4.3 Obligations if a vessel is not a facility or an associated offshore place

If a vessel or structure is not a *facility* or an *associated offshore place*, the vessel or structure does not fall under the OHS provisions of the OPGGSA administered by NOPSA. However, it may be subject to Maritime legislation or State/NT OHS laws.

4.4 General duties relating to OHS and requirement for safety cases

All the duties of the operator in respect of the facility apply equally in respect of the associated offshore place because it is part of the facility.

The operator's duties and obligations under the legislation include:

- to ensure that the facility is safe, work is safe, etc [Schedule 3 Clause 9].
- to facilitate designated work groups, Health and Safety committees and Health and Safety Representatives (HSRs), etc [Schedule 3 Part 3].
- to provide an OHS inspector with transport, accommodation and subsistence [Schedule 3 Clause 73].
- to notify NOPSA of accidents and dangerous occurrences at or near the facility [Schedule 3 Clause 82].

- to keep records of accidents, etc [Schedule 3 Clause 83].

The OHS inspector has powers in an associated offshore place since it is included as part of the facility:

- power to direct that a workplace, etc not be disturbed [Schedule 3 Clause 76].
- power to issue a prohibition notice to the operator [Schedule 7 Clause 77] (Note – this is unlike an improvement notice which can be issued to persons other than the operator).

The following also apply to a facility, including an associated offshore place:

- The Safety Authority must be satisfied the operator is in day-to-day management and control [OPS Reg 2.3].
- The Safety Authority can de-register an operator who is not in day-to-day management and control [OPS Reg 2.4].
- The operator must carry out validation as agreed [OPS Part 4].

A safety case is required for the relevant stage in the life of a facility [OPS Reg 2.44]. The treatment of an associated offshore place in a safety case must meet all requirements of OPS Part 3 Division 1.

If a safety case revision is being made because of an associated offshore place, the revision is likely to be required as a result of the activities to be carried out at the facility are different from the activities contemplated in the safety case [OPS 2.30(1)(e)].

Under Clause 3, the operator has a duty to take all reasonably practicable steps to ensure safety and health regarding all work and other activities carried out on the facility.

Where there is a party in control of part of a facility or particular work, say an activity in an associated offshore place, then Clause 10 is relevant [Schedule 3, Clause 10]. Clause 10 does not substitute for Clause 9 and the operator needs to take all reasonably practicable steps in relation to activities in the associated offshore place, which may include assuring themselves that the party (say, a contractor) undertaking the activity has implemented systems to properly control risk.

4.5 Requirements relating to the Safety Investigation Levy

In relation to the *Offshore Petroleum (Safety Levies) Act 2003* Clauses 5 and 6 require the operator of a facility to pay a *safety investigation levy* in relation to notifiable accidents and occurrences under certain conditions. Such notifiable accidents and occurrences may occur in an associated offshore place included as part of a facility.

5 Disclaimer

This Guideline and others provided on NOPSA's website are intended to provide general guidance to the industry as to the approach that NOPSA takes in carrying out its regulatory functions under powers conferred by the Commonwealth, State and NT Petroleum (Submerged Lands) Acts and Regulations under those Acts. These Guidelines should not be relied on as advice on the law, nor treated as a substitute for legal advice in any relevant situation.