



Guideline

Safety Case and PSMP Levies

Introduction

This note is provided as guidance on NOPSA's approach to the application of safety case levies to offshore facilities (other than pipelines), and pipeline safety management plan levies for offshore pipelines. This material must not be considered as legal advice. For proper legal advice on the legislation, interested parties should seek professional legal opinion.

Background

The then *Petroleum (Submerged Lands) Amendment Act 2003* amended the *Petroleum (Submerged Lands) Act 1967 (PSLA)*, creating NOPSA and providing that NOPSA be funded through industry levies. The *Offshore Petroleum (Safety Levies) Act 2003* imposes the levies and its Regulations prescribe how the levies are worked out and when they are due and payable. The levies include:

- safety case levy, an annual levy to be imposed in relation to the safety case that is in force in relation to a facility;
- 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, and
- 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, above a set threshold of \$30,000.

This guidance note addresses the safety case levy and the pipeline safety management plan levy.

Safety Case Levies

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA)*, Schedule 3, Clause 4, defines certain types of vessels or structures undertaking offshore petroleum operations as facilities. A safety case is required for the relevant stage in the life of the facility and the operator of a facility must submit a safety case to NOPSA. If a safety case for a facility is accepted by NOPSA, the operator of the facility is subject to levies under the *Offshore Petroleum (Safety Levies) Act 2003*, and the *Offshore Petroleum (Safety Levies) Regulations 2004* (OPSL regulations) and the amendment of 2006.

OPSL Act – Safety Case Levy

The *Offshore Petroleum (Safety Levies) Act 2003* (OPSLA) imposes a safety case levy, payable by the operator of a facility (OPSLA section 7). The term 'operator' has the same meaning as in Schedule 3 to the OPGGSA. The safety case levy is imposed if a facility is located, or is proposed to be located, in Commonwealth waters and if there is a safety case in force in relation the facility.

The OPGGSA Schedule 3 definition of vessels or structures that are facilities includes facilities that are 'being used, or prepared for use'. Under the OPSLA the term 'facility' has the same meaning as that in Schedule 3 to the OPGGSA and also includes a 'proposed facility' (i.e. a facility that is proposed to be constructed, installed or operated).

OPSLA section 8 provides for similar arrangements in designated coastal waters (where the mirror legislation is in place). The expression 'in force' means that the safety case for the facility has been accepted by NOPSA, and that the acceptance has not been withdrawn. Simply, if a facility is in, or proposed for, Commonwealth waters or designated coastal waters (Safety Authority waters) and a safety case is in force, then the safety case levy is imposed.

The safety case levy is an annual levy. The levies are imposed for a calendar year or part of a calendar year depending on when the safety case comes into force in that year. The amount of the safety case levy for the year, or part of the year, is worked out based on the OPSL regulations. The levy calculation method is broadly similar for all facilities. However, Section 687 of the OPGGSA provides for the return (remittal) of part of the levy for intermittently operated facilities under specified circumstances. Remittal is described in more detail below.

Section 686 of the OPGGSA also provides for a late payment penalty calculated at a rate of 0.333333% per day.

OPSL Regulations

OPSL regulations 20 to 35 set out the provisions for the safety case levies in Safety Authority waters. A note to Regulation 20 clarifies the safety case levy arrangements for proposed facilities. A facility includes a proposed facility, and a levy is imposed on a facility, proposed for Safety Authority waters, with a safety case in force even if the facility is not yet in Safety Authority waters.

A proposed facility is not required to have a safety case in force unless it has commenced to be constructed or installed in Safety Authority waters (i.e. a safety case in force is only required at the commencement of construction or installation of a facility), however, operators may seek earlier acceptance of a safety case. For example, the operator of a mobile drilling facility that is located outside Australia, and not necessarily proposed to be located in Safety Authority waters, may wish to have their safety case reviewed and accepted⁽¹⁾.

Calculating the safety case levy

The OPSL regulations provide for working out and paying the safety case levy. The amount of the safety case levy imposed is calculated as the sum of:

- SMS amount, and
- the facility amount for each facility in relation to which the safety case is in force.

The SMS amount and the facility amount are worked out using Schedule 1 of the OPSL regulations. This is described below in this note.

In general, the OPSL regulations divide facilities into two categories:

1. Mobile facility
2. Other than a mobile facility (not a mobile facility)

For example, the safety case levy is due and payable in quarterly instalments (regulation 23) with the timing of payment depending on whether the facility is a 'mobile facility' or not (i.e. 'other than a mobile facility'). For facilities other than a 'mobile facility' payment is a month in advance of the relevant quarter, while for a 'mobile facility' payment is a month in arrears of the relevant quarter.

The OPSL regulations also provide for reconciliation of amounts collected where there has been a variation to the rating of a facility (explained below) or for where there is a remittal of part of an amount of the safety case levy for 'mobile facilities' that operate on an intermittent basis in Safety Authority waters.

Remitting part of the safety case levy for Mobile Facilities

The remittal process of part of an amount of the safety case levy is set out in OPSL regulation 25 and applies only to facilities that operate on an intermittent basis. Only 'mobile facilities' are declared to be facilities that operate on an intermittent basis.

The amount remitted for the relevant quarter depends on the number of days not operated in Safety Authority waters in that quarter. 'Operated' means having undertaken any activities that relate to the use or preparation for use of the 'mobile facility' for offshore petroleum operations at the site. Days not operated are only full days (24 hours commencing at midnight) in which no operations were undertaken.

The remission of the facility amount and the SMS amount are treated separately. NOPSA must not remit a part of the facility amount of the safety case levy such that for a period of 4 consecutive quarters the facility amount would be less than the sum of 2 whole quarter amounts.

NOPSA must not remit a part of the SMS amount of the safety case levy such that for a period of 4 consecutive quarters the SMS amount would be less than the sum of 2 quarterly instalments. The SMS amount, for the purposes of the remittal calculation, is the SMS amount payable for the relevant quarter. The relevant quarter amount means the annual SMS amount divided by the number of relevant quarters.

In general, a remission must not result in the amount payable being less than 2 quarterly instalments in any rolling 4 quarter period.

This remittal process applies to the facility amount for a given 'mobile facility'. It also applies to the SMS amount only if there is no facility of the operator which is in operation. For NOPSA to work out the amount to be remitted, NOPSA needs to be informed of the number of days not operated using a standard form that is available from the NOPSA website.

Schedule 1 to the OPSL Regulations

Facility amount

The facility amount is the product of two factors:

- the facility's applicable facility rating, and
- the unit amount which is set at \$25,000.

The applicable facility rating is tabulated (in OPSL regulations, Schedule 1, paragraph 2.3) for seven (7) facility types, including MODUs (facility rating 6); pipelay or construction barges; or accommodation barges (facility rating 5). For example, the annual facility amount for a MODU with a safety case in force at the beginning of the year would be $6 \times \$25,000 = \$150,000$ and a whole quarter amount would be $\$150,000/4 = \$37,500$.

The facility amount after the start of a quarter is the part quarter amount for the first quarter and whole quarterly amounts thereafter. The part quarter amount is based on when the safety case for the facility was accepted by NOPSA (safety case in force).

For safety cases that come into force part way through a quarter, the part quarter facility amount for a facility is based on the number of days in which the safety case was in force.

For example, if the safety case for a MODU came into force on day 11 of the first quarter of 2005 (safety case in force for 80 days in Q1/05), then the facility amount for the first quarter is $\$150,000 \times 80/365 = \$32,877$.

OPSL regulations, Schedule 1, paragraph 2.3 uses the table shown below to calculate the facility amount.

Item	Facility or proposed facility	Facility rating
1	Large production platform with drilling/workover capability	9
2	Other production platform with accommodation facilities:	
	(a)when drilling/workover facilities are in commission	8
	(b)when drilling/workover facilities are not in commission	5
	<i>Note</i> This is a variable-rating facility .	
3	Floating production storage and offloading facility	6
4	Mobile offshore drilling unit or drill-ship	6
5	Vessel or structure being used for laying pipes for petroleum, the erection, dismantling or decommissioning of a facility or for the provision of accommodation for persons working on another facility	5
6	Floating storage unit linked to a production platform	3
7	Monopod, well head platform or other small production facility with no accommodation	1

Variable-rating facilities are only those listed at item 2 in the table above. Operators of variable-rating facilities must keep NOPSA informed about operations relevant to the facility rating.

The facility amount is taken to be zero for facility types that are not specifically listed in the above table from Schedule 1.

SMS amount

An operator is required to pay only one SMS amount in relation to a year irrespective of the number of safety cases in force. The SMS amount is specified depending on whether the facilities involved fall into the categories 'not a mobile facility' or 'mobile facilities'. The SMS amount is a flat annual fee. Schedule 1, paragraph 3.3 provides a table to determine the SMS amount which is summarised below.

Facilities	SMS amount
At least one of the facilities is not a mobile facility	\$125,000
All the facilities are mobile facilities	\$80,000

Mobile facilities

For the purposes of the safety case levy, 'mobile facility' means a facility of a kind mentioned in Schedule 2 of the Offshore Petroleum (Safety Levies) (OPSL) Regulations 2004. Schedule 2 lists only:

1. Mobile offshore drilling unit (MODU) or drill-ship
2. Pipe-lay vessel or vessel or structure used for the erection, dismantling or decommissioning of a facility
3. Accommodation facility used for persons working on another facility

A vessel may be defined as a facility if it is 'doing work on an existing pipe'. However, as such a vessel is not listed in Schedule 2 as a 'mobile facility', it is 'other than a mobile facility' for the purposes of calculating the SMS amount.

A vessel which is defined as a facility in Clause 4 of Schedule 3 to the OPGGSA 2006, but is not specifically described in Schedule 2 of the Levies Regulations is liable for the SMS amount of the safety case levy (currently \$125,000 for 'other than a mobile facility') but will not be liable for a facility amount as the facility rating is deemed to be zero. There is no remittal due to intermittent use for such vessels, as they are not included in the facilities declared as operating on an intermittent basis, i.e. 'mobile facilities'.

Safety Case Levy is an annual levy

The safety case levy is an annual levy. If, at the start of a calendar year, there is a safety case in force in relation to a facility then there is an obligation to pay the annual levy amount. A safety case levy is imposed for that year, although payable quarterly, regardless of what might subsequently occur in relation to the safety case or the facility (the actual amount charged may be varied through the remittal mechanism for intermittent use facilities).

If the safety case is accepted part way through a year rather than at the start of the year, then the safety case levy is imposed for that part of that year. This is worked out on a quarterly basis as set out in Schedule 1 of the Levies Regulations.

The annual obligation for the facility amount starts, for safety cases accepted part way through a quarter, with the part quarter facility amount based on the number of days in the first quarter during which the safety case was in force. For each subsequent quarter, to meet the annual obligation for the facility amount, whole quarter amounts are payable, based on the facility amount for the year divided by 4.

The SMS amount is the same amount for the year regardless of the start date that arises from acceptance of the safety case by NOPSA.

For a mobile facility, the safety case levy is imposed for the part of that year following safety case acceptance, but the safety case levy may be subject to remittal. This means that for a mobile facility leaving Safety Authority waters within a year there would continue to be a safety case levy obligation and ongoing invoicing, however, if payments (net of expected future remittals) meet the minimum annual safety case levy, further invoicing may not be undertaken.

Pipeline Safety Management Plan (PSMP) Levies

The *Offshore Petroleum (Safety Levies) Act 2003* (OPSL) imposes a pipeline safety management plan levy (PSMP levy) in Commonwealth waters (OPSL Clause 9) and in designated coastal waters (OPSL Clause 10). The PSMP levy is imposed if, amongst other things, there is a 'pipeline safety management plan in force in relation to a pipeline'.

In the *Offshore Petroleum (Safety Levies) Regulations 2004*, Regulation 4 (2) provides: "Despite any other provision of these Regulations: (a) the amount of a levy, to which these Regulations relate, that is payable in relation to the waters in which the longer or longest part of the pipeline is not located is zero."

The OPSL Act establishes the pipeline safety management plan (PSMP) levy as an annual levy. The levy is paid for each pipeline safety management plan (PSMP) in force.

However, the Levies Regulations specify that the annual levy is to be paid only for those years where a significant assessment is necessary. If a PSMP is already in force at the start of a year, the PSMP levy is payable only if there was a major revision in the previous year as per the table immediately below:

Is a PSMP in force for the pipeline at the start of the year?	Did a major revision of the PSMP come into force during the previous year?	Amount of levy
Yes	No	Zero
Yes	Yes	Use Table Below
No	N/A	Use Table Below

The PSMP Levy is structured similarly to the safety case levy. There are 2 components. The amount of pipeline safety management plan levy for a pipeline safety management plan is the sum of:

- (a) the SMS amount; and
- (b) the pipeline amount for each pipeline in relation to which the pipeline safety management plan is in force;

The SMS amount is \$40 000 for each PSMP. A PSMP may cover more than one pipeline but the SMS amount is paid only once.

The pipeline amount is calculated for each pipeline within a PSMP and is calculated by multiplying:

- (a) the pipeline's applicable pipeline rating; and
- (b) the unit value.

The applicable pipeline rating depends on the number of sub-sea developments connected to the pipeline as follows:

Level of sub-sea development	Rating
No sub-sea development or manifold connected to the pipeline	1
One or 2 sub-sea developments or manifolds connected to the pipeline	2
More than 2 sub-sea developments or manifolds connected to the pipeline	3

The unit value is \$10 000 for each pipeline.

For example if a PSMP covers two pipelines, one pipeline connected a production platform to shore and a second pipeline with 3 sub-sea development connections, then the total levy payable by the relevant licensee would be calculated as follows:

SMS Charge		\$40,000
Pipeline amount (pipeline 1)	Rating 1 multiplied by \$10,000 =	\$10,000
Pipeline amount (pipeline 2)	Rating 3 multiplied by \$10,000 =	<u>\$30,000</u>
Total		\$80,000

The definition of a pipeline⁽²⁾ is the same as in the OPGGSA and includes a pipeline that is proposed to be constructed or operated or is being constructed. It does not include secondary lines.

If the pipeline travels through more than one jurisdiction, the OPSL regulations make it clear that the levy is paid only once.

The PSMP levy:

1. Is imposed on the pipeline licensee (not the pipeline operator).
2. Is imposed if there is a PSMP in force in relation to the pipeline (a PSMP is in force once the Pipeline Management Plan (PMP) has been accepted by the relevant DA in accordance with the *Petroleum (Submerged Lands) (Pipelines) Regulations 2001*).
3. Is set to zero in all years except when the PSMP is first accepted and in any subsequent year after the acceptance of any non-minor revision to the PSMP.
4. Is payable 60 days subsequent to the acceptance of the initial PMP and thereafter 60 days after the acceptance of any non-minor revision (or at the beginning of the next year whichever is the later).

The PMP and hence the PSMP must be revised every 5 years. NOPSA will normally treat a 5 year revision as a non-minor revision⁽³⁾ of the PSMP, and therefore a PSMP Levy will be payable every 5 years as a minimum.

Notes

- (1) In the case of proposed facilities being constructed outside Safety Authority waters and not necessarily proposed to be located in Safety Authority waters, an operator may choose to request NOPSA to assess a Safety Case in respect of a proposed facility in accordance with Regulations 48 and 49. In this case an operator would be required to pay a fee to NOPSA for the cost of the assessment but, pursuant to Regulation 21(3), would not be required to pay the Safety Case levy until the facility has entered Safety Authority waters.

- (2) The definition of a pipeline in the OPGGSA is as follows:

Pipeline means a pipe or system of pipes in an adjacent area for conveying petroleum, whether the petroleum is petroleum recovered from an adjacent area or not, but does not include a pipe or system of pipes:
 - (a) for returning petroleum to a natural reservoir;
 - (b) for conveying petroleum for use for the purposes of petroleum exploration operations or operations for the recovery of petroleum;
 - (c) for conveying petroleum that is to be flared or vented; or
 - (d) for conveying petroleum from a well, wherever located, to a terminal station in an adjacent area without passing through another terminal station.

- (3) See NOPSA Guidance on 'Determination of Revisions to a PSMP as Major or Minor' N-4000 GL75

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 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and the Petroleum (Submerged Lands) Act 1982 of the States and Northern Territory, 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.