

**EXPLANATORY MEMORANDUM TO THE  
OFFSHORE PETROLEUM ACTIVITIES (OIL POLLUTION PREVENTION  
AND CONTROL) REGULATIONS 2005**

**2005 No. 2055**

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

**2. Description**

The draft Regulations introduce a permitting regime to apply to the UK offshore oil and gas industry in relation to oil discharges. Permits will impose discharge limits and conditions in relation to discharges of oil but will not impose a limit on the volumes of discharges of dispersed oil in produced water since such discharges will be subject to a Trading Scheme which the draft Regulations authorise.

**3. Matters of special interest to the Joint Committee on Statutory Instruments.**

None.

**4. Legislative Background**

Since United Kingdom offshore oil production first began in 1975, the industry has been regulated under the Prevention of Oil Pollution Act 1971 which was implemented to regulate either accidental or intentional oil discharges from shipping. Although the 1971 Act anticipated oil production and exploration and conferred regulatory powers in relation to it in section 3, the Act is now regarded as being out-of-date particularly in its definition of oil and lacks the flexibility to cope with the increasing demand on environmental performance. The draft Regulations will remedy these deficiencies and give wider powers to environmental inspectors for the monitoring and investigation of oil discharges.

Oil and gas production entails the production of considerable quantities of water. By virtue of its status as a contracting party to the Oslo/Paris Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), the United Kingdom is required to implement OSPAR Recommendation 2001/01 and so to meet an OSPAR target relating to the quantity of oil discharged in produced water representing a 15% reduction in the quantity discharged in 2006 compared to 2000. In order to minimise the costs of achieving this reduction, the United Kingdom's proposal is to introduce a Trading Scheme for dispersed oil in produced water discharges. This proposal has the full support of the United Kingdom offshore oil and gas industry.

**5. Extent**

The draft Regulations apply to the whole of the United Kingdom Continental Shelf except Scottish controlled waters these being the waters up to three miles from the Scottish coast.

## **6. European Convention on Human Rights**

The Minister for Energy and E-Commerce has made the following statement regarding Human Rights:

In my view the provisions of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 are compatible with the Convention rights.

## **7. Policy background**

The draft Regulations will introduce a more robust, effective and efficient approach to the management of oil discharges by the offshore oil and gas industry. The draft Regulations will do four things:

- update the definition of oil (which is long overdue);
- introduce a system of permits replace the current exemptions issued under the Prevention of Oil Pollution Act 1971; and
- introduce more wide-ranging powers for the Offshore Environment Inspectors to monitor and investigate all oil discharges whether lawful or unlawful;
- authorise the introduction of a Trading Scheme.

In the absence of these draft Regulations, operators will be less likely to look for opportunities to reduce the impact of oil discharges on the marine environment and the United Kingdom would fail to meet the requirements of an international commitment.

There is little public interest in the draft Regulations outside the offshore oil and gas industry. There is no political importance attached to the draft Regulations but they are important from a legal point of view.

## **8. Impact**

The Full Regulatory Impact Assessment is attached to this Explanatory Memorandum.

## **9. Contact**

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**Signed *Mike O'Brien***

**Date 06/02/2005**

**Mike O'Brien MP**

**Minister for Energy and E-Commerce**

**Department of Trade and Industry**

## **REGULATORY IMPACT ASSESSMENT**

### **1. Title of proposal**

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

### **2. Purpose and intended effect of measure**

#### **2.1 The objective**

The objective of the Regulations is to introduce a more robust, effective and efficient approach to the management of oil discharges by the offshore oil and gas industry. To achieve this, the Regulations will do four things:-

2.1.1 update the definition of oil;

2.1.2 introduce a system for the issue of permits for oil discharges to replace the current exemptions issued under the Prevention of Oil Pollution Act 1971;

2.1.3 introduce more wide-ranging powers for the Offshore Environmental Inspectors to monitor and investigate oil discharges, including accidental oil spills;

2.1.4 authorise a trading scheme to reduce the amount of dispersed oil discharged in produced water arising from the requirements of an international commitment.

Offshore oil and gas environmental issues are a reserved matter.

#### **2.2 The background**

The current definition of oil is more than 30 years old and does not capture all oil discharges that need to be controlled.

The introduction of permits will bring management of those oil discharges which cannot be reasonably avoided into line with similar approaches used to control the use and discharge of chemicals under the Offshore Chemical Regulations 2002 and atmospheric emissions under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001.

The current powers available to monitor and investigate oil discharges are inadequate since the definition of oil does not cover all the types of oil produced or used offshore. Consequently the scope for effective control of oil discharges is limited. Current powers to enforce remedial action or to further prosecutions are also not as rigorous as they should be.

A 2001 Recommendation, agreed under the Oslo /Paris Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR) and relating to the management of produced water from offshore installations, requires the UK to achieve a 15% reduction in the quantity of dispersed oil discharged in produced water in 2006, measured against the baseline of the equivalent discharge in 2000.

## **2.3 Risk Assessment**

In the absence of these Regulations there is limited legal incentive for operators to look for further opportunities to reduce the volume of oil discharged to the marine environment. The combination of a formal application, assessment and permitting procedure for oil discharges and a trading scheme to reduce the discharges of dispersed oil in produced water will bring a more robust approach to the control of oil discharges.

## **3. Options**

- a) Do nothing. This is not desirable as the current regime for managing oil discharges is out-of-date and results in inadequate environmental controls. It would also not enable the UK to achieve the target in the OSPAR Recommendation.
- b) Introduce a voluntary scheme. This is not possible since it would not enable reductions to be enforced. In addition, new powers are required both to monitor and investigate both permitted and unpermitted oil discharges and enable a statutorily-based verification system to be put in place to show that the required reductions in discharges of dispersed oil in produced water have actually occurred as part of the reconciliation process in the Trading Scheme
- c) Introduce Regulations. This is the only viable option as the powers to control discharges and introduce a trading scheme must be on a statutory basis to ensure their effectiveness and enforceability. The Regulations will be made using the order-making power in the Pollution Prevention and Control Act 1999 and will contain a provision authorising the making of a trading scheme in accordance with the power conferred by the 1999 Act.

## **4. Benefits**

### **4.1 the benefits of pursuing option (c)**

The overriding benefit will be enhanced protection of the marine environment. The specific benefits are as follows:-

4.1.1 updating the definition of oil will allow an all-encompassing control of oil discharges;

4.1.2 introduction of a system for the issue of permits for oil discharges to replace the current exemptions issued under the Prevention of Oil Pollution Act 1971 will allow for better control of oil discharges;

4.1.3 introduction of more wide-ranging powers for the Offshore Environmental Inspectors will improve legislative compliance and lead to prevention of some oil discharges; and

4.1.4 the introduction of a statutorily based trading scheme to reduce the amount of dispersed oil discharged in produced water is the most efficient means of achieving the reduction target and will reduce the costs associated with implementing the OSPAR Recommendation.

### **4.2 Business sectors affected**

The only business sector affected will be the offshore oil and gas industry.

### **4.3 Issues of Equity or Fairness**

The Regulations will introduce a regime that will strike a balance between the need for more effective control of the discharge of oil offshore and the requirements of the industry to provide security of energy supply. The Regulations will adopt a more robust approach to avoid discharges, whilst retaining flexibility to deal with the discharges that cannot be reasonably avoided. In particular, a trading scheme for dispersed oil discharges in produced water is (a) the most efficient means to reduce discharges to meet a specific target because there will be an incentive for operators to identify the best opportunities to reduce discharges; (b) the most economically efficient because the industry will be able to select the lowest cost options and (c) the most equitable because the burden will be spread generally in proportion to historic discharges.

## **5. Costs**

Costs will arise from the both the issue of permits and the trading scheme.

### **5.1 Compliance costs for the issue of permits**

Offshore operators, of whom there are forty-four, already have to seek exemptions for some, but not all, oil discharges under the Prevention of Oil Pollution Act 1971.

Accordingly, the introduction of a permitting system should not represent the imposition of any major additional costs.

**Implementation costs** will come from the costs to be borne by operators associated with applying for, maintaining and requesting a variation to, a permit. Manpower and other internal company resources will be required to put together an application for a permit but these should not be substantial. Every effort will be made when establishing the administrative procedures to keep the burden on operators to a minimum consistent with the aims of the Regulations. Accordingly, for example, application procedures will be merged wherever possible to make it easier to obtain all the necessary environmental permits, and, approvals and all applications will be made and permits issued electronically.

Since neither the industry nor Government could sensibly handle the administrative burden arising from the large number of permits which would be required to be issued on the day the Regulations come into force, the Regulations provide for a rolling start for existing discharging installations. This recognises that there needs to be a transitional period during which operators of existing installations holding existing exemptions can apply for permits on a progressive basis.

It is estimated that in 2005 there will be 215 applications for permits to replace existing exemptions (“life permits” since they will last until end of field life) and about 200 applications for permits covering time-limited activities. The total cost to the Government of dealing with these applications is estimated to be about £639,000. These costs will be recoverable through fees payable by operators. Fees will be charged by way of a Charging Scheme made under powers contained in the Pollution Prevention and Control Act 1999. Operators will be charged £1,540 for either a “life permit” or a permit covering a time-limited activity. The Charging Scheme includes provision for review of these fees in consultation with the industry.

**Policy costs** will relate to compliance with permit conditions. For example, there could be a cost associated with a requirement to reduce the amount of oil that is permitted for discharge. The Government will always ensure these costs are justified. It is not possible to quantify these costs as they will vary on a case-by-case basis.

There will be some costs associated with monitoring requirements arising from permit conditions. For example, operators will need to carry out routine analysis of samples to confirm discharge levels and to report discharges to the Department via an electronic system of reporting. In addition, in some cases there will be costs associated with monitoring the environment, although this requirement will be determined on a case-by-case basis and is unlikely to affect all operators.

## **5.2 Compliance Costs for the trading scheme**

**Implementation costs** for the Trading Scheme will almost exclusively relate to the cost to Government of setting up the Registry. These will be recovered through the fees mentioned above. Operators will need to familiarise themselves with the mechanics of trading if they have not already done so, but most will also be involved in the EU Emissions Trading Scheme and will therefore have already investigated this issue.

**Policy costs** for the Trading Scheme may arise for an operator (a) to introduce the necessary abatements for dispersed oil in produced water discharges or (b) to purchase allowances. If an operator fails to do either of these things, then he would be liable to pay the civil penalty for failing to surrender allowances equivalent to discharges. However, the purpose of a trading scheme is to generate sufficient discharge reductions to meet the UK target and avoid payment of a penalty. The OSPAR Recommendation was agreed some time ago and resulted in investment in technology to reduce the level of discharges of dispersed oil in produced water. An estimate of the total cost of this investment is £130 million but most operators have already made this commitment. Accordingly, these costs cannot be directly attributed to the Trading Scheme. There will also be costs associated with instructing independent auditors to prepare verified annual returns in relation to discharges of dispersed oil as part of the reconciliation process.

### **5.3 Other costs**

No environmental or social costs are anticipated as a result of these Regulations.

### **5.4 Costs for a typical business**

The number of “life” or “term” permits (see above) that offshore operators will require will vary greatly, simply because the number of fields operated will also vary greatly. During the rolling start, an offshore operator, on average, will incur application costs of approximately £20,000. Once the rolling start has ended, such an operator will incur annual costs of about £15,000.



## **6. Consultation with small business: the Small Firms' Impact Test**

The only business sector affected will be the UK offshore oil and gas industry that does not comprise small businesses so this test has not been carried out.

## **7. Competition Assessment**

The proposed Regulations will affect all operators in the offshore oil and gas industry. The introduction of a permitting scheme, in place of the existing arrangements for the grant of exemptions, is likely to result in some increases in costs for all offshore operators. These increases will take the form of permit fees (which will seek to recover the administrative costs of running the scheme, including inspection costs), costs relating to compliance with permit conditions (such as carrying out monitoring and testing of discharges) and costs relating to compliance with reporting requirements. Any increases will generally fall on individual operators in proportion to the scale of their operations.

The Government considers that implementation is unlikely to result in any negative competition impacts. Although it is not possible, at this stage, to provide estimated figures, it is not expected that any cost increases will be sufficient in relation to the turnover of the operators involved to affect the existing structure of the market.

## **8. Enforcement and Sanctions**

The Department employs Offshore Environmental Inspectors whose duties will include investigating whether any requirements or prohibitions imposed by the Regulations or by way of permit conditions are being met.

The Department will be able to revoke permits if it transpires that an operator is contravening any condition of his permit. Operators will be required to report oil discharges on a regular basis and non time-limited permits will be reviewed and amended, if necessary, once every three years, or more frequently if that is considered desirable, by requesting an updated oil discharge forecast from an operator holding a permit.

In addition, the Department will be able to issue either Enforcement Notices which would stipulate remedial action to correct a breach of a permit condition or Prohibition Notices to do the same for oil discharges not subject to a permit.

If there has been an unlawful discharge, an Inspector is empowered, should he deem it necessary, to take a written statement which could ultimately be used as part of a prosecution against the person responsible for the unlawful discharge.

A person guilty of an offence under the Regulations will be liable to a fine.

In relation to the Trading Scheme, there will be a civil penalty that would be imposed if, at the time of reconciliation, operators did not have sufficient allowances to surrender against their targets. The proposed penalty is £280/kilogramme of dispersed oil in produced water discharged.

## **9. Monitoring and Review**

The Regulations and more particularly the Guidance Notes will be kept under review during their administration in order to ascertain whether they could be improved by introducing amending Regulations and further editions of the Guidance Notes. The rules for the Trading Scheme will also be kept under review and amended if necessary. Any amendments proposed for anything will be agreed with industry before their implementation.

## **10. Consultation**

### **10.1 Within Government**

Consultation with relevant Government Departments took place from 14 February 2003 to 7 March 2003. That consultation did not include any reference to the proposed trading scheme. There were no major points arising out of the consultation. Further consultation on the trading scheme specifically took place during August 2004, involving selected Government Departments. Again no major points arose from the consultation.

### **10.2 Public consultation**

Consultation on previous drafts of the Regulations, the Guidance Notes and Regulatory Impact Assessment was carried out from 13 May 2003 to 14 August 2003. Those consulted were the offshore oil and gas industry, NGOs and environmental bodies. Only six replies were received none of which raised any major concerns and nearly all the comments sought clarification.

A second consultation with the same recipients took place from 7 May 2004 to 24 May 2004 in order to cover various minor amendments to the draft Regulations and Guidance Notes necessitated by the main consultation. Very few replies were received, and all the comments related to the draft Guidance Notes. Most of those comments were adopted and the Guidance Notes amended accordingly.

Neither of the above consultations contained reference to the proposed trading scheme so further consultation was undertaken.

An informal consultation with industry and selected Government Departments specifically on the proposed trading scheme took place from 12 August to 27 August 2004 and a formal consultation took place from 1 October to 2 November 2004.

A range of responses was received relating to specific installation baselines and targets, and the operation of the trading scheme, but there were no objections to the proposed amendment of the Regulations to authorise a Trading Scheme.

## **11. Summary and Recommendation**

There is a requirement to: a) introduce more robust and effective management of offshore oil discharges to enhance protection of the marine environment, and b) achieve the 15% reduction target set out in the OSPAR Recommendation with

minimal costs. These requirements will be met through more positive assessment and transparent implementation of controls, accompanied by more wide-ranging inspection powers, and by the introduction of a Trading Scheme which offers the most effective, economically efficient and equitable means of meeting these requirements. The recommendation is that these aims be achieved by introducing Regulations using the order-making power in the Pollution Prevention and Control Act 1999.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed ***Mike O'Brien***

Date **06/02/2005**

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# **Rules of the Dispersed Oil in Produced Water Trading Scheme**

**made under**

**The Offshore Petroleum Activities  
(Oil Pollution Prevention and  
Control) Regulations 2005**

Department of Trade and Industry  
Energy Resources and Development Unit  
Offshore Environment and Decommissioning

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## 1. LEGISLATIVE BASIS

1.1. This Scheme is authorised under regulation 10 of The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

## 2. DEFINITIONS

2.1. In this Scheme the following terms have the meanings specified.

**Act** means the Petroleum Act 1998.

**Allocation plan** means the plan from time to time made by the Secretary of State and published by DTI in accordance with rule 6, specifying the allowances to be allocated to each offshore installation in respect of one or more calendar years.

**Allowance** means a unit representing one kilogramme of dispersed oil in produced water allocated in respect of an offshore installation under the allocation plan.

**Cessation of production** in relation to an offshore installation, tie-back or drilling centre means the date on which it permanently ceases to produce petroleum (as defined in section 1 of the Act) and “ceased production” shall be construed accordingly.

**Commencement of production** in relation to an offshore installation, tie-back or drilling centre means the date on which it starts to produce petroleum (as defined in section 1 of the Act) and “commenced production” shall be construed accordingly;

**Discharge** in relation to oil means its release from an offshore installation.

**Dispersed oil** means the oil in produced water measured using the DTI infrared/solvent extraction (IR/SE) method, or any alternative method from time to time approved by DTI.

**Drilling centre** means a discrete offshore drilling and production centre that is not located at the host offshore installation but that serves a field that is already served by that host offshore installation.

**DTI** means the Department of Trade and Industry.

**Emission** means the direct or indirect release of substances from individual or diffuse sources into the air or into relevant waters.

**Field development programme** means a programme submitted to DTI under the Act seeking approval for the proposed development of an oil, gas or condensate field.

**Host offshore installation** means an offshore installation that serves a number of oil, gas or condensate fields or drilling centres and that treats and discharges dispersed oil in produced water originating from such fields or drilling centres.

**Offshore installation** has the same meaning as in section 44 of the Act save that, for the purposes of this Scheme (excepting only rules 6.2 and 6.5) the term shall be limited to an offshore installation –

- (a) in respect of which a permit has been granted under the Regulations ; and
- (b) which treats and discharges dispersed oil in produced water.

**Operator** means any person who operates an offshore installation.

**Permit holder** means the holder from time to time of a permit to discharge produced water to relevant waters granted under the Regulations.

**Produced water** means water which is produced during oil, gas or condensate production operations and includes formation water, condensation water, re-produced injection water and water used for desalting oil.

**Registry** means the registry established and maintained by DTI in accordance with rule 9.

**Regulations** means The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

**Relevant waters** has the same meaning as in section 44 of the Act save that it does not include Scottish controlled waters.

**Scottish controlled waters** means any waters that are controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974.

**Secretary of State** means the Secretary of State for Trade and Industry.

**Sub-allocation** in relation to the dealing in allowances means the re-allocation of allowances to third parties selected by the registry account holder.

**Tie-back** means a discrete offshore drilling or production centre that is not located at the host offshore installation and that serves a separate field from that already served by the host offshore installation.

**Trade** in relation to the dealing in allowances means the reallocation of allowances to another registry account, as a result of a commercial transaction.

**Transfer** in relation to the dealing in allowances means the reallocation of allowances to another registry account, in the absence of any commercial transaction.



**Water-cut** means the percentage of produced water in the produced fluids attributable to oil and gas production operations.

**Verified annual return** means a return of discharges of dispersed oil in produced water covering a period of one calendar year verified in accordance with rule 7.

**Verifier** means a competent, independent accredited verification body with responsibility for performing and reporting on the verification process mentioned in rule 7 in accordance with the requirements specified by DTI and, in this context, "accredited" means accredited by the United Kingdom Accreditation Service (UKAS).

### **3. PARTICIPATION**

3.1 All permit holders shall be subject to this Scheme.

3.2 The operators of offshore installations which have ceased production during the period 1 January 2000 to 31 December 2005 shall also be subject to this Scheme as provided in rule 6.2.

### **4. SCOPE OF THE SCHEME**

4.1 This Scheme shall apply to discharges of dispersed oil in produced water.

### **5. COMMENCEMENT OF THE SCHEME**

5.1 This Scheme shall commence on 1 January 2006.

### **6. ALLOWANCES**

#### **6.1 Allocation of Allowances in Respect of Discharges from Offshore Installations**

6.1.1 The first allocation plan shall be published as soon as the Regulations come into force.

6.1.2 Subsequent allocation plans shall be published on or about 1 January in each year commencing on 1 January 2006.

6.1.3 Allowances allocated under allocation plans shall not be carried forward from one calendar year to the next.

6.1.4 The Secretary of State reserves the right to review, and where appropriate amend, the allocation plans.

#### **6.2 Allocation of Allowances in Respect of Offshore Installations which have Ceased Production**

6.2.1 The allocation plan published by DTI when the Regulations came into force shall specify the allowances which, subject to rule 6.2.4,

shall be allocated in respect of offshore installations which have ceased production during the period 1 January 2000 to 31 December 2004.

6.2.2 The allocation plan published by DTI on or about 1 January 2006 shall specify the allowances which, subject to rule 6.2.4, shall be allocated in respect of offshore installations which have ceased production during the period 1 January 2005 to 31 December 2005.

6.2.3 The allowances specified in accordance with rules 6.2.1 and 6.2.2 shall relate to the calendar year 2006.

6.2.4 The operators of offshore installations in respect of which allowances are allocated under this rule shall receive a letter from DTI confirming the number of allowances so allocated. Those operators shall be required to acknowledge receipt of that letter and to confirm in writing their agreement to be bound by rules 8 to 10 of this Scheme.

### 6.3 Transfer of Allocations on Assignment of an Offshore Installation to Another Person

6.3.1 When an offshore installation is assigned to another person, the original permit holder shall provide to that person, no later than completion of the assignment, historical data relating to discharges of dispersed oil in produced water from that offshore installation during the period from-

- (a) 1 January 2000; or
- (b) where the offshore installation commenced production after 1 January 2000, the date of commencement of production.

until the date of provision of the data.

6.3.2 Following the assignment of a permit to another person pursuant to regulation 8 of the Regulations

- (a) the number of allowances allocated in respect of the offshore installation shall remain unchanged;
- (b) the allocation plan shall be amended to record the change in the permit holder, such amendment taking effect on the date of assignment of the permit; and
- (c) the registry account relating to that installation and any allowances in that account shall be assigned to that of the new permit holder, such changes taking effect on the date of assignment of the permit.

### 6.4 New Entrant Allowances – New Offshore Installations

6.4.1 Subject to rule 6.4.2, the point of departure for consideration of new offshore installations (which have commenced production after the

commencement of this Scheme) is that there shall be no discharges of dispersed oil in produced water.

6.4.2 Operators of new offshore installations may apply in the manner specified in rule 6.4.3 for the allocation of allowances relating to discharges of dispersed oil in produced water resulting from one or both of the following-

- (a) the planned maintenance of alternative disposal facilities; or
- (b) exceptionally, the non-availability or non-feasibility of alternative disposal facilities.

6.4.3 Operators requiring allowances for any one or more of the reasons specified in rule 6.4.2 shall apply in accordance with the Regulations for a permit to discharge produced water. The application shall be accompanied by production and water cut projections covering the three-year period from the commencement of production of the offshore installation to which the application relates.

6.4.4 Applications made in accordance with rule 6.4.3 shall only be considered by DTI if the new offshore installation is the subject of-

- (a) an approved field development programme; or
- (b) an approval granted under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999.

6.4.5 Following a rule 6.4.3 application, DTI shall determine the number of allowances to be allocated in the calendar year in which the application is made and in subsequent calendar years, having regard, in particular, to-

- (a) discharges of dispersed oil in produced water anticipated in the projections accompanying that application; and
- (b) the obligation to ensure that best available techniques are applied in relation to the treatment of produced water

and allocations of allowances under this rule shall be recorded in an amended allocation plan published by DTI and in a registry account established under rule 9.2 relating to the new offshore installation.

6.4.6 Subject to rule 6.4.7, following submission of the verified annual return for the second full calendar year of operation of the new offshore installation (“the relevant return”), DTI shall review the number of allowances allocated in accordance with rule 6.4.5. In order to facilitate the review, the relevant return shall be accompanied by revised life-of-field production, water cut and dispersed oil in produced water discharge projections for the new offshore installation, each of which shall take account of the verified annual returns submitted at any time prior to commencement of the review and take account of the obligation to ensure

that best available techniques are applied in relation to the treatment of produced water.

6.4.7 Allowances allocated with reference to any period preceding or during the calendar year in which the review takes place shall be unaffected.

6.4.8 If the revised projections mentioned in rule 6.4.6 indicate that the total number of kilogrammes of dispersed oil in produced water to be discharged from the new offshore installation –

- (a) exceeds or falls short of by ten percent or less; or
- (b) exceeds by more than ten percent; or
- (c) falls short of by more than ten percent

the total number of allowances allocated in respect of that installation for the calendar years following that in which the review takes place, then the outcome of the review shall be as specified in rules 6.4.9(a), 6.4.9(b) and 6.4.9(c) respectively.

6.4.9 Subject to rule 6.4.11 the outcome of the review in relation to allowances allocated for the calendar year following that in which the review takes place shall be as follows-

- (a) in the circumstances described in rule 6.4.8(a), no adjustments shall be made as a consequence of the review to the allowances already allocated and detailed in the allocation plan;
- (b) in the circumstances described in rule 6.4.8(b), the allowances already allocated and detailed in the allocation plan shall be supplemented by an additional number of allowances equivalent to the difference between the ten percent threshold and the revised projections; and
- (c) in the circumstances described in rule 6.4.8(c), the allowances already allocated and detailed in the allocation plan shall be reduced by an amount equivalent to the difference between the ten percent threshold and the revised projections.

6.4.10 Any adjustments of the allocations of allowances under this rule shall be recorded in -

- (a) an amended allocation plan published by the DTI; and
- (b) the registry account relating to the new offshore installation established under rule 9.2.

6.4.11 DTI shall be entitled to undertake such additional reviews of allowances allocated under rule 6.4.5 at such intervals as it shall in its sole discretion determine.

6.4.12 In circumstances where allowances are reduced, the permit holder shall be responsible for ensuring that there are sufficient allowances in the registry account to facilitate the reduction.

## 6.5 New Entrant Allowances - New Tie-Backs and Drilling Centres

6.5.1 Subject to rule 6.5.2, the point of departure for consideration of a new tie-back or drilling centre (which has commenced production after the commencement of this Scheme) is that there shall be no discharges of dispersed oil in produced water from the host offshore installation attributable to the new tie-back or and drilling centre.

6.5.2 The operators of host offshore installations may apply in accordance with rule 6.5.3 for the allocation of additional allowances relating to discharges of the type mentioned in rule 6.5.1, which result from one or both of the following-

- (a) the planned maintenance of alternative disposal facilities; or
- (b) exceptionally, the non-availability or non-feasibility of alternative disposal facilities.

6.5.3 The operator of a host offshore installation requiring additional allowances for any one or more of the reasons specified in rule 6.5.2 shall apply in accordance with the Regulations for a variation of the permit to discharge produced water and request an adjustment of the allocation plan. The request shall be accompanied by production, water cut and dispersed oil in produced water discharge projections for both the host offshore installation and the new tie-back or drilling centre for the three year period following the commencement of production of the the new tie-back or drilling centre, and take account of the obligation to ensure that best available techniques are applied in relation to the treatment of produced water.

6.5.4 Without prejudice to the requirements of rule 6.5.3, rules 6.4.4 to 6.4.11 shall apply to the consideration and handling of rule 6.5.3 requests subject to the following modifications-

- (a) the new tie-back or drilling centre in respect of which additional allowances are allocated must be the subject of one or other of the following-
  - (i) an approved field development programme; or
  - (ii) an approved addendum to an approved field development programme; or
  - (iii) an approval granted under The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999.

(b) the anticipated discharges to which reference is made in rule 6.4.5(a) must be attributable to the new tie-back or drilling centre;

(c) following the second full calendar year of operation of the new tie-back or drilling centre the operator of the host offshore installation shall submit separate verified annual returns in relation to-

- (i) the host offshore installation; and
- (ii) the new tie-back or drilling centre;

(d) the life-of-field production, water cut and dispersed oil in produced water discharge projections submitted in accordance with rule 6.4.6 shall relate to the new tie-back or drilling centre; and

(e) references in rule 6.4.8 to-

- (i) the total number of kilogrammes of dispersed oil in produced water discharged; and
- (ii) the total number of allowances allocated

shall be taken to refer to discharges attributable to and additional allowances allocated in respect of the new tie-back or drilling centre.

## 6.6 Withdrawal of Allowances on Cessation of Production

6.6.1 If an offshore installation ceases production after the commencement of this Scheme –

(a) the permit holder shall retain the allowances allocated in respect of that installation for the calendar year in which cessation of production occurs; and

(b) at the end of the calendar year in which cessation of production occurs, the permit holder shall surrender the permit granted in respect of that installation, and DTI shall withdraw the full number of allowances allocated with reference to subsequent calendar years.

6.6.2 If a tie-back or drilling centre ceases production after the commencement of this Scheme –

(a) the operator of the host offshore installation shall retain the allowances allocated in respect of discharges of dispersed oil in produced water attributable to that tie-back or drilling centre for the calendar year in which cessation of production occurs; and

(b) DTI shall withdraw such number of allowances allocated or to be allocated with reference to subsequent calendar years as shall be calculated in accordance with rules 6.6.3 and 6.6.4.

6.6.3 At least one calendar month prior to cessation of production of the tie-back or drilling centre, the operator of the host offshore installation shall apply in accordance with the Regulations for variation of the permit to discharge produced water and request an adjustment of the allocation plan. The request shall be accompanied by production and water cut data for both the host offshore installation and the tie-back or drilling centre for-

- (a) the three year period prior to cessation of production; or
- (b) in circumstances where the tie-back or drilling centre commenced production less than three years prior to cessation of production, the period between the date of commencement of production of the tie-back or drilling centre and cessation of production.

6.6.4 The average annual contribution of the tie-back or drilling centre to discharges of dispersed oil in produced water from the host offshore installation during the period mentioned in rule 6.6.3 shall be calculated and -

- (c) in the case of tie-backs or drilling centres that commenced production prior to 1 January 2000 or after 1 January 2006-
  - (i) a number of allowances equivalent to that average annual contribution shall be withdrawn by DTI in respect of each calendar year subsequent to that in which cessation of production occurred; and
  - (ii) both the allocation plan and the registry account established under rule 9.2 relating to the host offshore installation shall be adjusted accordingly;

and

- (d) in the case of tie-backs or drilling centres that commenced production during the period 1 January 2000 to 31 December 2005, no allowances shall be withdrawn by the DTI.

6.6.5 In circumstances where allowances are withdrawn, the permit holder shall be responsible for ensuring that there are sufficient allowances in the registry account to facilitate the withdrawal.

## 6.7 Withdrawal of Allowances on Transfer of Production

6.7.1 The treatment of allowances on a production transfer shall be governed by this rule and, for the purposes of this rule, the following expressions have the meanings specified –

- (a) **transferor** means the offshore installation from which production is transferred;
- (b) **transferee** means the offshore installation to which production is transferred; and

(c) **production transfer** means the partial or total transfer of production from the transferor to the transferee on a permanent basis.

6.7.2 At least one calendar month prior to a proposed production transfer the operators of the transferor and the transferee shall apply in accordance with the Regulations for variations of their permits to discharge produced water and the operator of the transferor shall request an adjustment of the allocation plan. The request for an adjustment of the allocation plan shall be accompanied by-

(a) production and water cut data for both the transferor and the transferee for-

(i) the period of three years immediately prior to the request; or

(ii) where either the transferor or the transferee commenced production less than three years prior to the request, the period from the date of commencement of production of the transferor or the transferee, as the context requires, until the date of the request;

(b) production, water cut and dispersed oil in produced water discharge projections for both the transferor and the transferee for the period of three years immediately following the request;

(c) any other data relevant to the production transfer including details of the processing plant of both the transferor and the transferee and its comparative performance, taking account of the obligation to ensure that best available techniques are applied in relation to the treatment of produced water; and

(d) an estimate based on the data described in rules 6.7.2(a) to 6.7.2(c) of-

(i) any reduction in discharges of dispersed oil in produced water from the transferor; and

(ii) any increase in discharges of dispersed oil in produced water from the transferee

anticipated as a result of the production transfer.

6.7.3 Following receipt of a request submitted in accordance with rule 6.7.2, DTI shall be entitled to require-

(a) the provision of additional data; and

(b) such other verification of the estimate mentioned in rule 6.7.2(d)

as it considers necessary in order to deal with the request.

6.7.4 Following a rule 6.7.2 request and receipt by DTI of any additional material provided in accordance with rule 6.7.3, DTI shall



determine the number of allowances to be allocated in respect of the transferor and the transferee. Subject to rule 6.7.5, the effect of the determination shall be as follows-

- (a) allowances allocated in respect of the transferor and the transferee for the calendar year in which the production transfer occurs shall be unaffected by the production transfer;
- (b) for each calendar year subsequent to that in which the production transfer occurred, the DTI shall transfer a number of allowances from the transferor's registry account to the transferee's registry account, the number transferred corresponding to the projected increase in discharges of dispersed oil in produced water from the transferee;
- (c) DTI shall withdraw in respect of the transferor any surplus allowances which would otherwise be generated by the production transfer in each calendar year-subsequent to that in which the production transfer occurred; and
- (d) the allocation plan shall be adjusted accordingly;

6.7.5 Subject to rule 6.7.6, following upon submission of the verified annual returns for the second full calendar year of operation of the transferor and transferee following the production transfer ("the relevant returns"), DTI shall-review the number of allowances which have been or are to be allocated, transferred or withdrawn in connection with the production transfer. In order to facilitate the review, the relevant returns shall be accompanied by revised life-of-field production, water cut and dispersed oil in produced water discharge projections for the transferor and the transferee, each of which shall take account of the verified annual returns submitted by the transferor and transferee at any time prior to commencement of the review, and take account of the obligation to ensure that best available techniques are applied in relation to the treatment of produced water.

6.7.6 Allowances allocated with reference to any period preceding or during the calendar year in which the review takes place shall be unaffected.

6.7.7 If the revised projections mentioned in rule 6.7.5 indicate that the total number of kilogrammes of dispersed oil in produced water to be discharged from the transferee and attributable to the production transfer-

- (a) exceeds or falls short of by ten percent or less; or
- (b) exceeds by more than ten percent; or
- (c) falls short of by more than ten percent

the total number of allowances transferred or to be transferred under rule 6.7.4(b) for the calendar years following that in which the review takes

place, then the outcome of the review shall be as specified in rules 6.7.8(a), 6.7.8(b) and 6.7.8(c) respectively.

6.7.8 Subject to rule 6.7.10, the outcome of the review in relation to allowances allocated or to be allocated, transferred or withdrawn in the calendar years following that in which the review takes place shall be as follows-

(a) in the circumstances described in rule 6.7.7(a), no adjustment shall be made as a consequence of the review to the allowances already allocated and detailed in the allocation plan;

(b) in the circumstances described in rule 6.7.7(b), the allowances already allocated and detailed in the allocation plan shall be supplemented by an additional number of allowances equivalent to the difference between the ten percent threshold and the revised projections; and-

(i) any allowances withdrawn by DTI in accordance with rule 6.7.4(c) shall be re-allocated in respect of the transferor, the maximum number of such allowances being equivalent to the difference between the ten percent threshold mentioned in rule 6.7.7 and the revised projections;

(ii) a number of allowances equivalent to those re-allocated under rule 6.7.8(b)(i) shall be transferred from the transferor to the transferee; and

(c) in the circumstances described in rule 6.7.7(c), the allowances already allocated and detailed in the allocation plan shall be reduced by an amount equivalent to the difference between the ten percent threshold and the revised projections, and a number of allowances equivalent to those re-allocated under this rule shall be transferred from the transferee to the transferor.

6.7.9. Any adjustments of the allocations of allowances under this rule shall be recorded in -

(a) an amended allocation plan published by the DTI; and

(b) the registry accounts relating to the transferor and transferee established under rule 9.2.

6.7.10. DTI shall be entitled to undertake such additional reviews of allowances to be allocated, transferred or withdrawn in connection with a production transfer as it shall in its sole discretion determine.

6.7.11. In circumstances where allowances are withdrawn, the permit holder shall be responsible for ensuring that there are sufficient allowances in the registry account to facilitate the withdrawal.

## 6.8 Re-allocation of Withdrawn Allowances

6.8.1 All allowances withdrawn by DTI in accordance with this Scheme shall be retained by DTI. Where appropriate, the withdrawn allowances shall be used for future allocation to –

- (a) new offshore installations; or
- (b) host offshore installations serving new tie-backs or drilling centres.

## **7. VERIFICATION OF ANNUAL RETURNS**

7.1 After the commencement of the Scheme, permit holders shall instruct a verifier in relation to the verification of annual returns of discharges of dispersed oil in produced water from-

- (a) each offshore installation operated by them; and
- (b) in the case of a host offshore installation, each new tie-back or drilling centre served by the host installation.

7.2 The verification of annual returns shall be undertaken in accordance with the requirements from time to time specified by DTI, and verified annual returns shall be submitted to DTI no later than 31 March following the calendar year to which they relate.

## **8. TRADING TRANSFER AND SURRENDER OF ALLOWANCES**

8.1 While this Scheme subsists-

- (a) permit holders shall be entitled to transfer and trade allowances allocated to or otherwise acquired by them in respect of any calendar year until 31 March of the next following calendar year;
- (b) permit holders shall be required to surrender a number of allowances equivalent to the discharges of dispersed oil in produced water specified in the verified annual return by 30 April in the year following that to which the allowances and verified annual return relate.

8.2 Where, as at 30 April in any year, a registry account contains a number of allowances which –

- (a) relate to the preceding calendar year; and
- (b) exceed the number of kilogrammes of dispersed oil in produced water discharged in the calendar year to which they relate from the offshore installation to which the registry account relates

then that number of allowances shall be withdrawn by DTI.

## **9. THE REGISTRY**

9.1 DTI shall establish and maintain a registry in which data relating to-

- (a) allocations;
- (b) adjustments of allocations;
- (c) trades;
- (d) transfers;
- (e) reductions;
- (f) withdrawals; and
- (g) surrenders

of allowances shall be recorded in accordance with rules 9.4 and 9.5.

9.2 The registry shall consist of a series of accounts in the names of permit holders each of which relates to an offshore installation in respect of which allowances are allocated under this Scheme

9.3 The registry account holder shall be entitled to create subsidiary accounts for the sub-allocation of allowances to third parties.

9.4 DTI shall be responsible for recording in the registry the data described in rules 9.1(a), 9.1(b), 9.1(e), 9.1(f) and 9.1(g).

9.5 In the case of the data described in rules 9.1(c) and 9.1(d), details shall be recorded in the registry by both the buyer and the seller of the allowances, or by the persons transferring the allowances on behalf of the buyer and seller, as appropriate.

## **10. PENALTIES**

10.1 If a permit holder fails by the date specified in rule 8.1(b) to surrender in respect of an offshore installation operated by him a number of allowances equivalent to the number of kilogrammes of dispersed oil in produced water certified in the verified annual return as having been discharged from that installation, that permit holder shall be liable to pay a civil penalty calculated in accordance with rule 10.3.

10.2 If a permit holder's registry account in respect of an offshore installation operated by him does not contain sufficient allowances to facilitate a reduction of allowances under Rule 6.4.9(c) or a withdrawal of allowances under rules 6.7 or 6.8, that permit holder shall be liable to pay a civil penalty calculated in accordance with rule 10.3.

10.3 The civil penalty mentioned in rule 10.1 and 10.2 shall amount to £280 (two hundred and eighty pounds) per kilogramme of dispersed oil in produced water that is discharged in excess of allowances surrendered or deficient in the registry account.

10.4 The amount of the civil penalty shall be specified in a civil penalty notice given by DTI to the permit holder within three calendar months from the date of the surrender of the allowances which shall-

- (a) set out DTI's reasons for deciding that the permit holder is liable to pay the civil penalty;
- (b) specify the date by which the civil penalty must be paid to DTI;
- (c) describe how payment of the civil penalty must be made;
- (d) explain the steps that the permit holder can take if he objects to the civil penalty; and
- (e) set out and explain the powers of DTI to enforce the civil penalty.

10.5 A permit holder to whom a civil penalty notice is given may give notice that he objects to the penalty on one or both of the following grounds that –

- (a) he is not liable to pay it;
- (b) the amount of the civil penalty is incorrect.

10.6 The notice of objection shall-

- (a) set out the grounds of the objection and the permit holder's reasons for objecting on those grounds; and
- (b) be given within one calendar month after the giving of the civil penalty notice.

10.7 DTI shall consider a notice of objection given in accordance with this section and may then –

- (a) cancel the civil penalty;
- (b) reduce it;
- (c) increase it; or
- (d) confirm it.

10.8 DTI shall not enforce a civil penalty in respect of which it has received a notice of objection before it has notified the permit holder of the outcome of its consideration of the objection.

10.9 Notification of the outcome of DTI's consideration of an objection to a civil penalty shall be given-

- (a) within three calendar months; or
- (b) within such longer period as it may agree with the permit holder.

10.10 If, on consideration of an objection, DTI increases the civil penalty it shall give the permit holder a new civil penalty notice. If DTI reduces the civil penalty it shall set out the reduced amount in the notification mentioned in rule 10.8.

10.11 Payment of a civil penalty imposed in accordance with rule 10.1 shall be due within one month of the giving of-

- (a) the civil penalty notice; or
- (b) the notification mentioned in rule 10.8

whichever is the later. Civil penalties unpaid by the due date shall attract interest at the rate of 7.5% per annum above the Bank of England base rate.

10.12 Civil penalties and any amount of interest accrued in respect thereof shall be recoverable as if a civil debt.

## **11. FORCE MAJEURE**

11.1 Subject to rule 11.2, a permit holder shall not be liable to pay a civil penalty in circumstances where his failure to surrender allowances equivalent to discharges of dispersed oil in produced water was solely attributable to something done as a matter of urgency for the purpose of securing the safety of any person.

11.2 A permit holder shall not be exempt from the requirement to pay a civil penalty for the reason stated in rule 11.1 if DTI is satisfied-

- (a) that the thing done-
  - (i) was not necessary for the purpose mentioned in that rule; and
  - (ii) was not a reasonable step to take in the circumstances; or
- (b) that the thing done was necessary for the purpose mentioned in that rule but that the necessity was due to the default of the permit holder.

## **12. REVIEW OF THE SCHEME**

12.1 The Secretary of State may review and where appropriate amend this Scheme by notice in writing.

## **13. TERMINATION OF THE SCHEME**

13.1 The Secretary of State may terminate this Scheme by notice in writing to expire on 31 March in any year.