

RESPONSIBILITY AND LIABILITY FOR GREENHOUSE GAS INJECTION AND STORAGE ACTIVITIES AUTHORISED UNDER AN AMENDED OFFSHORE PETROLEUM ACT 2006

Introduction

1. The question 'Who bears liability for injected CO₂?' potentially involves two quite separate kinds of 'liability'. These are:
 - the statutory responsibilities of the injection licence holder under the *Offshore Petroleum Act 2006* (OPA); and
 - common law liability of the licence holder, or another person involved in the project, to someone who has suffered injury or loss as a result of the migration or escape of the CO₂.
2. The new system of offshore greenhouse gas (GHG) titles is being incorporated into the OPA. This is because GHG injection and storage and petroleum production operations utilise the same kinds of geological formations in the seabed and because GHG injection and petroleum production operations use very similar technology and structures. GHG titles and regulatory processes are therefore being integrated with those that are currently in place for petroleum.
3. The treatment by the OPA of responsibility and liability for offshore GHG activities will therefore be the same as for offshore petroleum. In the case of petroleum, the Act and regulations establish comprehensive statutory responsibilities of title-holders with respect to the protection of the environment, other seabed resources and human health and safety. The OPA does not exclude, limit or allocate common law liability of petroleum title-holders or others engaged in offshore petroleum operations. Common law liability lies where it falls. This has been the case since the *Petroleum (Submerged Lands) Act 1967* was first enacted (except for an immunity from suit for regulators, which was added later – see below). The GHG amendments to the OPA will extend this same treatment of responsibility and liability to offshore GHG operations.

Statutory responsibilities

Injection phase

4. A GHG injection licence cannot be granted until there is an Injection Plan that has been approved by the regulator (who is the responsible Commonwealth Minister or his/her delegate). The Injection Plan will contain detailed modelling of the expected behaviour of the GHG after injection, including the expected migration path or paths. The Plan will also specify the safeguard measures that will be implemented to ensure that the injected GHG stream does not deviate from the expected migration path(s) and does not escape into the atmosphere. It will also contain a

comprehensive monitoring and verification program to be implemented by the licensee throughout the injection phase and post-injection phase of the project, to ensure that the injected GHG is behaving as predicted or, if it is not, to identify any risks to the environment, safety or other resources.

5. If the injected GHG does behave otherwise than predicted, or looks as though it may do so, the regulator will have extensive powers to direct the licensee to take action to eliminate, mitigate or manage any risk posed by the situation, including the suspension or permanent cessation of operations, as well as the taking of positive action to prevent or remedy any damage that might arise. A licensee who fails to comply with such a direction will be guilty of an offence under the Act.

Post-injection phase

6. Once injection of GHG ceases, the injection licensee will be required to undertake a post-injection work program before a site closing certificate is issued by the regulator.
7. The licensee will have conduct extensive monitoring and verification of the behaviour of the injected GHG, in order that reliable predictions can be made as to its potential migration and interaction with the surrounding geological structures. During this period, the licensee may be required to undertake precautionary or remedial work to prevent or mitigate harmful effects on the geotechnical integrity of the storage site. This will include any necessary measures to avoid damage to natural resources. The objective during this phase will be for the licensee to satisfy the regulator that all reasonable possibilities have been provided for.
8. As part of the site closing process, the licensee will be required to remove or decommission any structures, plant and equipment, to plug any remaining exploration or injection wells and make good any damage to the seabed and subsoil.
9. Finally, the licensee will be required to make financial provision for a program of post site closure monitoring and verification. The purpose of this work is to enable the regulator to compare predictions of GHG behaviour with actual results, in order to inform future regulatory practice.
10. The regulator will then issue a site closing certificate. All securities (except any that have been forfeited) will be returned. The licensee will then have no further statutory responsibilities and can abandon the site.

Common law liability

Immunity of regulators

11. Section 436 of the OPA at present confers an immunity from liability on regulatory bodies and individuals who carry out functions under the Act in relation to petroleum

titles and operations. That immunity will be extended to regulators of GHG titles and activities.

Common law liability of GHG title-holders and other project participants

12. Following the existing offshore petroleum model, the OPA will not immunise GHG title-holders or other participants in GHG projects from common law liability to persons who suffer injury or loss as a result of their actions. Nor will the OPA limit their liability. This non-intervention will extend to all forms of common law liability, including long-term liability.
13. The Commonwealth will therefore not 'take over' long-term liability from project participants. Nor will the Commonwealth provide any indemnity to project participants in respect of any liability they might incur.
14. In the long term, the risk will, in a sense, pass to the community. If GHG operations were to result in personal injury or loss to individuals, at a time when there were no project participants still available to be sued, or where damages were for some other reason irrecoverable, the cost would in practice be borne by the community. This will, however, be the consequence of the passage of time, not of any assumption of liability on the part of government.
15. GHG industry participants will therefore need to make their own arrangements to deal with potential common law liability, as an ordinary cost of doing business, as must members of any other industry.