Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2002 No.

ENVIRONMENTAL PROTECTION

The Offshore Chemicals Regulations 2002

Made - - - -	*2002*
Coming into force - -	*2002*

Whereas the Secretary of State has consulted the persons required to be consulted by section 2(4) of the Pollution Prevention and Control Act 1999(**1**);

And whereas a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament pursuant to sections 2(8) and 2(9) of that Act;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 2 and 7(9) of that Act hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Offshore Chemicals Regulations 2002 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"address", in relation to electronic communications, includes any number or address used for the purposes of such communications;

"business day" means any day, except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971(**2**);

"consultation parties" means, having regard to the part of the relevant area to which any permit would relate—

(a) the Centre for Environment, Fisheries and Aquaculture Science;

(b) the Fisheries Research Services,

(**1**) 1999 c. 24.
(**2**) 1971 c. 80.

together with any Contracting State which the Secretary of State considers may be affected by the use or discharge of any offshore chemical to which an application under these Regulations relates;

"Contracting State" means a State which the Secretary of State considers to be a contracting party to the Convention;

"Convention" means the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992(**3**);

"discharge" means the operational release of offshore chemicals, or their degradation and transformation products, from an offshore installation into the relevant area;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000(**4**);

"the Gazettes" means the London, Edinburgh and Belfast Gazettes;

"notice" means notice in writing;

"offshore activities" means any activities in respect of which the Secretary of State exercises functions under the Petroleum Act 1998(**5**), being activities carried out in the relevant area;

"offshore chemical" means any chemical, whether comprising a substance or a preparation, intentionally used in connection with offshore activities;

"offshore installation" means any structure or other thing (including any floating production storage and off-loading system or floating storage unit, but not including a ship) in the relevant area which is used for the purposes of, or in connection with, offshore activities;

"operator" means any person who operates an offshore installation;

"permit" means an authorisation granted by the Secretary of State pursuant to these Regulations to use or discharge any offshore chemical in the relevant area;

"permit application" means an application for a permit, being an application which satisfies the requirements of regulation 6(1) and "permit applicant" shall be construed accordingly;

"pipeline" has the same meaning as in section 26 of the Petroleum Act 1998;

"pollution" means the introduction by man, directly or indirectly, of substances or energy into the relevant area which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea;

"preparation" means a mixture or solution composed of two or more substances;

"prescribed date" means the date after the day on which the period of three months commencing on the day on which these Regulations come into force expires, save that when a permit application is made before that date it means—

(a) the date on which the permit is granted, whether in pursuance of the application or, on an appeal under regulation 17, of an order of the court; or

(b) where a permit is refused and the permit applicant appeals under regulation 17, the date on which the court upholds that refusal; or

(c) the date after the day on which the period provided for under regulation 17(6) expires,

as the case may be;

"relevant area" means that area (together with places above and below it) comprising—

(**3**) Cm 2265: Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs. Made at Paris, 22nd September 1992.
(**4**) 2000 c. 7.
(**5**) 1998 c. 17.

(a) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;

(b) the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters; and

(c) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(**6**);

"relevant project" has the same meaning as in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999(**7**);

"Scottish controlled waters" means any waters which are controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974(**8**);

"substance" means a chemical element or compound, in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product or any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

"substantial change" means a change in the type, quantity, frequency or location of the use or discharge of an offshore chemical which may have significant negative effects on people or the environment;

"use", in relation to offshore chemicals, means any application in connection with offshore activities that might result in a discharge.

Requirement for permit to use or discharge offshore chemicals

3.—(1) Subject to paragraphs (2) and (3), no person shall use or discharge any offshore chemical in the relevant area after the prescribed date otherwise than in accordance with the terms of, and conditions attached to, a permit.

(2) Where a person is using or discharging any offshore chemical in connection with any offshore activity that began on or before the date on which these Regulations come into force, that person may continue to use or discharge that offshore chemical until—

(a) such time as the Secretary of State may specify by notice; or

(b) (if no notice is given by the Secretary of State in accordance with sub-paragraph (a)) the date after the day on which the period of two years commencing on the prescribed date expires.

(3) A person using or discharging an offshore chemical in accordance with paragraph (2) shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing her functions under these Regulations.

Grant and refusal of permits

4.—(1) In considering whether to grant a permit, the Secretary of State shall have regard to any opinion expressed by—

(a) the consultation parties; and

(b) (except where the permit application is one to which regulation 7(2) applies) the general public.

(**6**) 1964 c. 29.
(**7**) S.I.1999/360.
(**8**) 1974 c. 40. The provisions of section 30A(1) were inserted into the 1974 Act by section 169 of, and Schedule 23 to, the Water Act 1989 (1989 c. 15).

(2) The Secretary of State shall not grant a permit unless she is satisfied that there has been substantial compliance with regulation 7.

(3) Where the Secretary of State grants a permit, she shall send it to the permit applicant.

(4) Where the Secretary of State refuses a permit application, she shall give notice of such refusal to the permit applicant.

(5) The Secretary of State shall publish in the Gazettes notice of the granting of any permit.

Conditions of permits

5.—(1) The Secretary of State may attach to any permit such conditions as she thinks fit.

(2) Without prejudice to the generality of paragraph (1), the Secretary of State may attach to any permit such conditions as in her opinion are calculated to ensure that—

(a) the quantity, frequency, location and duration of any permitted use or discharge of offshore chemicals are subject to appropriate restrictions;

(b) any permit granted for the use or discharge of any offshore chemical requires the operator to seek a suitable, less hazardous substitute;

(c) all appropriate measures are taken to prevent pollution in particular through the appropriate use of technology to limit discharge, emissions and waste;

(d) necessary measures are taken to prevent accidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;

(e) the appropriate monitoring of the use and discharge of offshore chemicals is facilitated, and such conditions may include—

(i) provisions relating to measurement techniques, technology and frequency and to evaluation procedures; and

(ii) obligations to supply the Secretary of State with data required for checking compliance with the permit, including any data setting out the actual quantity, frequency and location of the use and discharge of any offshore chemicals which has occurred during a specified period;

(f) long-distance or transboundary pollution is minimised; and

(g) appropriate measures are taken in relation to conditions other than normal operating conditions including start-ups, leaks, malfunctions, temporary stoppages and permanent cessation of operations.

Requirements relating to permit applications

6.—(1) A permit application shall be made in writing and shall contain—

(a) a description of the offshore installation on or from which the offshore chemical is to be used or discharged, and the location of the offshore installation in the relevant area;

(b) a description of the proposed technology and other techniques for preventing or, where prevention is not possible, reducing the use or discharge of the offshore chemical from the offshore installation;

(c) a description of the measures planned to monitor the use or discharge of the offshore chemical; and

(d) an assessment of the risk of harm to the environment from the use and discharge of the offshore chemicals proposed.

(2) The Secretary of State may by notice require a permit applicant—

(a) to produce such evidence as the Secretary of State may reasonably call for to verify any information provided in the permit application; or

(b) to provide such other information as the Secretary of State may specify for the purposes of properly considering a permit application in accordance with these Regulations.

Publicity for permit applications

7.—(1) Except where the permit application is one to which paragraph (2) applies, a permit applicant shall—

(a) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the use or discharge of any chemical to which the permit application relates, make a copy of the permit application available for public inspection at an address in the United Kingdom between the hours of 10 a.m. and 4 p.m. on business days for a period of not less than four weeks immediately following the publication (or last publication, where it is published in more than one newspaper or on more than one occasion) of the notice referred to in sub-paragraph (d);

(b) make available at an address within the United Kingdom enough copies of the permit application to be likely to satisfy all reasonable demands for copies pursuant to sub-paragraph (c);

(c) subject to sub-paragraph (b) and paragraph (3), supply during the period mentioned in sub-paragraph (a), a copy of the permit application;

(d) publish in such newspapers on such occasions as to be likely to come to the attention of any persons likely to be interested in, or affected by, the use or discharge of any chemical to which the permit application relates, a notice which—

(i) describes the permit application;

(ii) gives the address referred to in sub-paragraph (a) at which a copy of the permit application may be inspected;

(iii) states that a copy of the permit application may be obtained from the address referred to in sub-paragraph (b) and, subject to paragraph (3)(b), specifies the amount of any payment required to be tendered for a copy of the permit application; and

(iv) states a date not less than four weeks after the date on which the notice is to be last published by which any person may make representations in relation to the permit application to the Secretary of State and specifies the address to which any such representations are to be sent; and

(e) provide the Secretary of State with copies of the newspapers in which the notice referred to in sub-paragraph (d) appeared.

(2) This paragraph applies to permit applications made—

(a) in connection with a relevant project for which the Secretary of State gives a direction, pursuant to regulation 6 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999(**9**), that no environmental statement need be prepared;

(b) in connection with a discharge from a pipeline, being a discharge to which the Secretary of State gives a consent pursuant to an authorisation issued under Part III of the Petroleum Act 1998(**10**); or

(c) in connection with activities carried out in accordance with an abandonment programme approved by the Secretary of State under Part IV of the Petroleum Act 1998.

(**9**) S.I. 1999/360.
(**10**) 1998 c. 17.