

The Regulation of Oil Spill Treatment Products in the UK



marinescotland



1. INTRODUCTION

1.1 In May 2011, Exercise Sula tested the UK's capability to respond to a major marine pollution incident relating to a deepwater well blow-out, which included testing the National Contingency Plan for Marine Pollution for Shipping and Offshore Installations.

1.2 The Exercise Sula Final Report identified the following issue:

Although guidance and policy statements exist there was a great deal of discussion around dispersant application during day one of the exercise and an uncertainty over the process outside the Environment Group.

The report therefore recommended that:

A UK policy / position paper be produced by the environmental regulators and distributed to the offshore oil and gas industry.

1.3 This paper sets out the current procedures in relation to the control of use of oil spill treatment products in UK waters. This may involve seeking approval or advice. (It should be noted that the use of chemicals other than oil spill treatment products may be subject to different procedures, and separate advice should be sought from the regulatory authorities).

1.4 There are different legislative bases for obtaining approvals or advice, depending on the marine area and whether the use is further to an offshore oil and gas activity. However, the regulatory authorities have, as far as possible, agreed a common approach.

1.5 This document is designed to provide guidance in relation to the legislative differences, and the agreed procedures underpinning the use of oil spill treatment products in UK waters. For further information or clarification please contact the relevant regulatory authority:

DECC for all offshore oil and gas activities, via
offshore.inspectorate@decc.gsi.gov.uk

Marine Management Organisation (MMO) for all waters adjacent to England and Wales, via 0191 376 2666 or
dispersants@marinemanagement.org.uk

Marine Scotland for all waters adjacent to Scotland, via
ms.spillresponse@scotland.gsi.gov.uk

Northern Ireland Environment Agency for inshore waters adjacent to Northern Ireland, via emergency-pollution@doeni.gov.uk

Under The Public Bodies Act 2011, a separate Welsh body, the Natural Resources Body for Wales, is to be set up during 2013, which is likely to assume responsibility for the legislation and the procedures underpinning the use of oil spill treatment products in Welsh inshore waters. This would have to be reflected in an update of this paper.

2. LEGAL BACKGROUND

- 2.1 The Marine and Coastal Access Act 2009 (MCAA) and the Marine (Scotland) Act 2010 (MSA), and the related Marine Licensing (Exempted Activities) Orders (for the English inshore and offshore regions, the Welsh inshore region, the Northern Irish inshore region, the Scottish inshore region and the Scottish offshore region), set out the basis for the regulation of oil spill treatment products in UK waters. Although a Northern Ireland Marine Bill is likely to be enacted by early 2013, and it will then be necessary to update the legal background, this is not anticipated to affect the procedures set out in this paper.
- 2.2 Under section 77 of the MCAA, the MCAA regulatory regime does not apply to anything done in course of carrying on offshore oil and gas activities controlled under the Petroleum Act 1998, or offshore gas unloading, storage and recovery activities, and carbon dioxide storage activities, controlled under the Energy Act 2008 (subject to specific geographical exemptions relating to the devolution settlements). The use of oil treatment products in the course of these activities is therefore outside the MCAA regime. .
- 2.3 Under section 34 of the MSA, the MSA regulatory regime does not apply to any activity relating to a reserved matter by virtue of section D2 in Part II of Schedule 5 to the Scotland Act 1998, if the activity is outside controlled waters (0 – 3 Nm). The use of oil treatment products in the course of these activities is therefore outside the MSA regime in respect of Scottish territorial waters from 3 to 12 Nm. However, other legislation does apply (see paragraph 2.4).
- 2.4 Where the MSA regime does not apply to the use of oil treatment products in relation to a reserved matter in Scottish territorial waters (from 3 to 12 Nm), their use is subject to the Food and Environment Protection Act 1985 (FEPA), Part II (Deposits in the Sea), and paragraph 21 of the Schedule to the related Deposits in Sea (Exemption) Order also applies.
- 2.5 For the marine areas which would be subject to the MCAA regime but for the application of section 77, the Department of Energy and Climate Change (DECC) controls the use of oil spill treatment products as part of the approval process for Oil Pollution Emergency Plans (OPEPs) under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998. For Scottish territorial waters (from 3 to 12 Nm) where DECC is the licensing authority under FEPA Part II and paragraph 21 of the Schedule to the related Deposits in Sea (Exemption) Order applies, the controls under that paragraph are also effected via the OPEP approval process. Where DECC is the regulatory authority, it is committed to using procedures that broadly mirror those implemented under the MCAA, MSA and the related Marine Licensing (Exempted Activities) Orders.

3. APPROVAL OF OIL SPILL TREATMENT PRODUCTS

- 3.1 Irrespective of the relevant regulatory regime, oil spill treatment products must be approved for that purpose and included in the UK approved list of products before they can be considered for use in UK waters. The MMO administers the approval process in relation to implementation of the MCAA and MSA

regimes, on behalf of the relevant regulatory authorities. Where DECC is the regulatory authority, it has agreed that the oil spill treatment products selected by operators and detailed in the OPEP must be on the UK list of approved products, to ensure that a consistent approach is applied across the UK.

- 3.2 To obtain approval, products must pass efficacy and toxicity tests relevant to the product and its intended use. The test protocols are published in the [Marine Pollution](#) section of the MMO website.
- 3.3 Products which are not on the UK approved list of products cannot generally be considered for use. However, specific batches of a product that were manufactured when the product had a valid approval can still be considered for use, and details of cases where this applies are included with the UK approved list of products.

4. APPROVAL FOR THE USE OF OIL SPILL TREATMENT PRODUCTS

4.1 Approvals under the MCAA or MSA (i.e. approvals not related to Offshore Oil and Gas Activities)

4.1.1 The MCAA and MSA provisions apply to the use of oil spill treatment products that are not subject to the exclusions outlined in section 2, e.g. the provisions apply to onshore spills affecting the marine environment, harbour spills and shipping incidents. The relevant MCAA and MSA licensing authorities are:

| | |
|---|--|
| English waters 0-200 nm (or median line): | MMO |
| Welsh waters 0-12 nm: | MMO on behalf of National Assembly for Wales (NAW) |
| Welsh waters 12-200 nm (or median line): | MMO |
| Northern Irish waters 0-12 nm: | Northern Ireland Environment Agency |
| Northern Irish waters 12-200 nm (or median line): | MMO |
| Scottish waters 0-12 nm: | Marine Scotland under MSA |
| Scottish waters 12-200 nm (or median line): | Marine Scotland under MCAA |

4.1.2 The use of an oil spill treatment product in English, Welsh and Northern Irish waters currently requires the prior approval of the relevant licensing authority if it is made:

- i. in, or within 1 nautical mile of, waters of 20 metres depth or less;
- ii. beneath the surface of the sea; or
- iii. anywhere in the sea if the oil spill treatment product is only approved for offshore use.

4.1.3 All uses of oil spill treatment products in Scottish waters require the prior approval of Marine Scotland, and Defra is currently consulting on an amendment of the relevant Marine Licensing (Exempted Activities) Order to implement the same requirement for all UK waters. This would have to be reflected in an update of this paper.

- 4.1.4 Where prior approval is currently not required, responders are required to seek advice from the relevant licensing authority before using an oil spill treatment product in UK waters.
- 4.1.5 Where the use of an oil spill treatment product will affect the waters that are the responsibility of more than one licensing authority, responders should notify both authorities. They will coordinate their approval decisions or advice, and provide a joint response.
- 4.1.6 The licensing authorities operate a 24 hour on-call service, and aim to provide a response within one hour. Where appropriate, they will consult with bodies such as the Environment Group, the Centre for Environment, Fisheries and Aquaculture Science, the Statutory Nature Conservation Agencies (e.g. the Joint Nature Conservation Committee) and the Maritime and Coastguard Agency.
- 4.1.7 If an Environment Group meeting has been convened, the consultation may take place within that forum, but responsibility for the approval decision and advice will rest with the relevant licensing authority.
- 4.1.8 Approval decisions and advice will be based upon determining whether the use of the oil spill treatment product is expected to result in the least harm to the marine environment.
- 4.1.9 Where approval is required, responders cannot proceed unless approval is granted. Where advice is provided, responders are expected to comply with that advice, or to enter into dialogue with the relevant licensing authority to discuss an alternative response strategy.
- 4.1.10 Consultees, such as the Environment Group, the Centre for Environment, Fisheries and Aquaculture Science, the Statutory Nature Conservation Agencies (e.g. the Joint Nature Conservation Committee) and the Maritime and Coastguard Agency, cannot give approval for the use of oil spill treatment products, or over-ride the approval decision or advice provided by the relevant licensing authority.

4.2 **Approvals in Relation to Offshore Oil and Gas Activities**

- 4.2.1 As stated in Section 2.5, DECC controls the use of oil spill treatment products in the course of, or in relation to, offshore oil and gas activities as part of the OPEP approval process.
- 4.2.2 The OPEP approval process requires operators to seek separate approval prior to the use of an oil spill treatment product:
 - i. in, or within 1 nautical mile of, waters of 20 metres depth or less; or
 - ii. beneath the surface of the sea.

Prior approval is not required for the use of an oil spill treatment product that is only approved for offshore use, providing the intended use of that product is included in the OPEP.

- 4.2.3 Where prior approval is not required, the OPEP approval process still requires operators to seek advice prior to the use of an oil spill treatment product in UK waters.

4.2.4 A review of the OPEP content, and the assessment, approval and implementation processes, is underway. The current position is that, in the event of a spill, DECC will notify its environmental advisers, as set out in the following table:

| | |
|---|--|
| English waters 0-200 nm (or median line): | MMO |
| Welsh waters 0-12 nm: | MMO on behalf of National Assembly for Wales (NAW) |
| Welsh waters 12-200 nm (or median line): | MMO |
| Northern Irish waters 0-12 nm: | Northern Ireland Environment Agency |
| Northern Irish waters 12-200 nm (or median line): | MMO |
| Scottish waters 0-200 nm (or median line): | Marine Scotland |

4.2.5 Prior to any use of an oil spill treatment product that does not have 'standing approval' (see section 5), operators should seek advice directly from the relevant environmental adviser. When the use of an oil spill treatment product will affect the waters of more than one environmental adviser, operators should seek advice from all the relevant advisers

4.2.6 The environmental advisers operate a 24 hour on-call service, and aim to respond within one hour. Where appropriate, they will consult with bodies such as the Environment Group, the Centre for Environment, Fisheries and Aquaculture Science, the Statutory Nature Conservation Agencies (e.g. the Joint Nature Conservation Committee) and the Maritime and Coastguard Agency.

4.2.7 If an Environment Group meeting has been convened, the consultation may take place within that forum, but responsibility for providing advice to DECC will rest with the relevant environmental advisers.

4.2.8 The environmental advisers will forward their advice to DECC, usually via e-mail, and will copy the advice to the operator. The advice will be based upon determining whether the use of the oil spill treatment product is expected to result in the least harm to the marine environment.

4.2.9 If approval is required prior to the use of the oil spill treatment product (see section 4.2.2), DECC (as the relevant regulatory authority) will provide the decision in an e-mail to the operator.

4.2.10 If approval is not required prior to the use of the oil spill treatment product, DECC will provide guidance based on the advice received from its environmental advisers in an e-mail to the operator.

4.2.11 Where prior approval is required, operators cannot proceed unless DECC grants that approval. Where approval is not required, operators are expected to delay operations until DECC has provided their guidance, and are expected to comply with that guidance. If the approval decision or guidance conflicts with the operator's assessment of the most appropriate response strategy, the operator should contact the DECC Offshore Environmental Inspector responsible for responding to the incident.

4.2.12 DECC may contact its environmental advisers to discuss their advice, or to discuss any matters raised by the operator. Where appropriate, DECC will advise the operator of the outcome of those discussions.

- 4.2.13 Consultees, such as the Environment Group, the Centre for Environment, Fisheries and Aquaculture Science, the Statutory Nature Conservation Agencies (e.g. the Joint Nature Conservation Committee) and the Maritime and Coastguard Agency, cannot give approval for the use of oil spill treatment products, or over-ride the approval decision or guidance provided by DECC.
- 4.2.14 The above procedure aligns with current DECC guidance relating to the use of oil spill treatment products. Operators will be advised of any changes following completion of relevant work streams relating to the OPEP process review.

5. STANDING APPROVALS

5.1 Standing Approvals under the MCAA or MSA

- 5.1.1 The relevant licensing authority may issue a standing approval to an owner of an appropriate marine pollution emergency plan, for example a harbour authority.
- 5.1.2 A standing approval authorises the holder to use an oil spill treatment product, in specific circumstances and subject to strict conditions, without seeking prior approval or advice from the relevant licensing authority.

5.2 Standing Approvals in Relation to Offshore Oil and Gas Activities

- 5.2.1 Where requested, DECC may issue a standing approval in conjunction with their approval of the operator's OPEP.
- 5.2.2 A standing approval may allow the operator to use an agreed quantity of the oil spill treatment product, or products, identified in the OPEP within a specific area and subject to specified condition without seeking further advice. The standing approval will normally be limited to stocks of oil spill treatment products held on the stand-by vessel or vessels, and it will be necessary to seek advice prior to continued use of additional stocks. Standing approvals will only be issued for areas that are not considered to be environmentally sensitive, and will not be issued for any use that requires prior approval (see section 4.2.2).

6. REPORTING THE USE OF AN OIL SPILL TREATMENT PRODUCT

6.1 Reporting Requirements under the MCAA or MSA

- 6.1.1 Any use of an oil spill treatment product must be reported to the relevant licensing authority within 72 hours of use. An example report form can be found at Annex F of the MMO's [Marine Pollution Contingency Plan](#).

6.2 Reporting Requirements in Relation to Offshore Oil and Gas Activities

- 6.2.1 Operators must report all oil spills and releases using Petroleum Operations Notice No.1 (PON1). A separate log of oil spill treatment product use must be maintained for all incidents in accordance with Section 5.5 of the PON1 guidance, and submitted to DECC upon request.

7. SECURING SAFETY AND SAVING LIFE

- 7.1 If an oil spill treatment product is used without the required approval of the relevant regulatory authority and in breach of the relevant legislative requirements, it may be a defence to demonstrate that the action was taken to secure the safety of a vessel, aircraft or marine structure, or for the purpose of saving life, and that the relevant regulatory authority was informed within a reasonable time.
- 7.2 The defence is unlikely to apply if the need to secure safety or save life is due to fault on behalf of the person responsible for the breach, or any other person acting under their direction or control.