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## **EOSCA Comments on the Norwegian Activity Regulations 2022**

29<sup>th</sup> September 2022

EOSCA would like to raise three issues with regards to the Activity Regulations, as follows:

1. Black environmental rating for Mut. and Repr. 1A & 1B – including Sodium Borates
2. The proposed change to Section 68 on OBF & OPF
3. The remaining issues from the EOSCA comments in 2021

### **Issue # 1**

EOSCA would like to raise concerns regarding Section 63 Categorisation of substances and chemicals, second paragraph, letter f):

‘The black category comprises of the following:

...

f) substances which are mutagenic, Muta 1A and B, or reprotoxic, Repr 1A and 1B...’

EOSCA propose removing Repr. and Mut. 1A & 1B as one of the black rating criteria on environment, because the human health classifications are not environmental considerations.

The issue should also be considered in connection with the proposed changes in the regulation due to the glutaraldehyde issue.

A full discussion on the issue concerning Mut. and Repr. 1A & 1B – including sodium borates, will be submitted separately by OFFSHORE NORGE and EOSCA.

### **Issue # 2**

The proposed change to Section 68 Discharge of cuttings, sand and other solid particles has been translated as follows:

#### **First and second paragraph:**

Drill cuttings, sand and other solid particles shall not be discharged to sea if the attachment of **base fluid in organic oil-based** drilling fluid or formation oil is more than ten grams per kilo of dry mass.

The operator shall have a permit under **Chapter 3 of the Pollution Control Act (in Norwegian only)** for the discharge of cuttings if the attachment of **base fluid in organic oil-based** drilling fluid is equal to or less than ten grams per kilo of dry mass.

**Justification:** Linguistic clarification.

**Financial and administrative consequences:** None.

It seems that the term **base fluid** (OBF) in organic oil-based drilling fluid or formation oil, has been replaced with the term **oil-based** drilling fluid (OPF). These are two vastly different concepts. The OPF Decision was on 1% of oil in the cuttings, not the drilling fluid.

The intention was for restrictions on the OBF for which there are clear standard measurement methods for, however there is no standard measurement technique for OPFs, and therefore we believe there has been a mistake or typographical error here. Another reason for believing that this is a typographical error is the justification of the change, given to be a linguistic clarification only.

We believe the following issues should be considered:

- There are standards methods to measure oil/base fluid (OBF) on cuttings whereas it is not possible to have a standard method to measure a drilling fluid (OPF), because all drilling fluids are different.
- The amount of oil (only compound with standard testing methods) varies from drilling mud to drilling mud. Therefore having a 1% cut-off on the drilling mud creates an unknown value of the amount of oil permitted in the cuttings.
- The OPF restriction from which the regulations derive (Annex 18, OSPAR Decision 2000/3 on the Use of Organic-Phase Drilling Fluids (OPF) and the Discharge of OPF-Contaminated Cuttings) was based on the concentration of OBF not OPF:  
"The discharge into the sea of cuttings contaminated with **OBF** at a concentration greater than 1% by weight on dry cuttings is prohibited".

"**Oil-based fluids (OBF)**" means low aromatic and paraffinic oils and those mineral oil-based fluids that are neither synthetic fluids nor fluids of a class whose use is otherwise prohibited.

"**Organic-phase drilling fluid (OPF)**" means an organic-phase drilling fluid, which is an emulsion of water and other additives in which the continuous phase is a water-immiscible organic fluid of animal, vegetable or mineral origin.

### Issue # 3

A number of issues were raised last year by EOSCA and were not included in the previous review. The remaining issues from EOSCA's 2021 comments are mostly regarding the English translation, but also regarding the lack of clarification in the regulation/guideline re freshwater toxicity tests. An additional comment to freshwater toxicity tests issue described below: It is stated on the Norwegian Environment Agency own web page that one has to apply to the Norwegian Environment Agency to use other relevant toxicity tests, including freshwater tests (Question & Answer number 2 – Norwegian only [Offshorekemikalier - spørsmål og svar - Miljødirektoratet \(miljodirektoratet.no\)](https://www.miljodirektoratet.no/Offshorekemikalier-sporsmal-og-svar)). However, this webpage is in Norwegian only and the issue should also be clarified in the regulation/guideline.

Regarding the English translation of the Activities regulations and the guideline, there is one additional section to comment on: Section 68a, as well as the guideline to this section, in the English translation of the Activities Regulations have not been translated into English yet. This may of course be because Section 68a and corresponding guideline were added to the regulations in 2021. However, this section and corresponding guideline also needs to be translated into English.

The remaining 2021 comments are as follows:

#### Comments regarding Fresh Water toxicity

##### **Section 62, fourth subsection, states:**

‘Toxicity tests performed on freshwater organisms may be accepted if results from marine tests are not available and if performed by standardized methods.’

Comment: When the term ‘may be accepted’ is used, it would be helpful to clarify who is in a position to accept/decide when freshwater data are acceptable. If the intention is for the authorities to be the accepting/deciding party, this would align with the OSPAR guideline for HOCNF. If the intention is for the operator to be the accepting/deciding party, chemical companies are likely to have to perform marine tests to be on the safe side, or in addition to existing freshwater data, because one or more operators may not accept the freshwater data for some reason. This would mean that the regulatory acceptance of freshwater data could be inconsistent between operators and different suppliers, and the regulatory acceptance of freshwater tests may seem hollow.

#### Comments regarding English translation

##### **Section 62, third subsection**

The last sentence in the Norwegian text in this subsection refers to fifth subsection, whereas the English translation refers to the sixth subsection.

##### **Section 62, seventh subsection**

The English translation of seventh subsection is not updated compared to the Norwegian original text. In the latter the current exemptions are listed as letter a) – f), here translated from Norwegian to the following:

‘The requirements for testing and ecotoxicological documentation in HOCNF part 2, does not apply for

- a) chemicals in green category, cf. Section 63
- b) the additive packages in chemicals in closed systems with a usage above 3000 kg
- c) additive packages in sealant oils for sea water pumps where there is discharge to sea
- d) impurities
- e) potassium hydroxide, sodium hydroxide, hydrochloric acid, sulfuric acid, nitric acid and phosphoric acid
- f) polymers that meet the criteria set out in the OSPAR Guidelines for Completing the Harmonized Offshore Chemical Notification Format (HOCNF) (Reference Number: 2012/05)’

With this year’s letter g) proposed as an additional exception.

In the current English version the section is as follows:

The requirements for testing and ecotoxicological documentation in HOCNF part 2, does not apply for chemicals in green category, cf. Section 63, the additive packages in chemicals in closed systems that is not discharged to sea with a usage above 3000 kg, impurities, potassium hydroxide, sodium hydroxide, hydrochloric acid, sulfuric acid, nitric acid and phosphoric acid. The requirements for testing and ecotoxicological documentation in the form of HOCNF Part 2 do not apply to polymers that meet the criteria set out in the OSPAR Guidelines for Completing the Harmonized Offshore Chemical Notification Format (HOCNF) (Reference Number: 2012/05).

The gist of the sections are the same, but the layout is different. Note however, group c) listed above is missing from the current English translation.

### **Section 63, third subsection**

The English translation of the third subsection is not updated compared to the Norwegian original text.

In the Norwegian original text the letters d-f) are included after a)-c), where letter e) is 'polymers which have not undergone ecotoxicological tests, cf. Section 62.'

In the English translation, only letter d) is included, not e)-f), but d) here is given as 'polymers which have not undergone ecotoxicological tests, cf. Section 62'. Hence the current English translation does not include hypochlorite produced on the installation, or the substances EDTA, DTPA, benzotriazole or N-methyl diethanolamine, included as red rated substances.

### **Section 63, fourth subsection**

The English translation of the fourth subsection is not updated compared to the Norwegian original text. The second sentence ('Strong acids and bases...') in the Norwegian text is not included in the English translation.

### **Guideline to Section 61a, second subsection**

The English translation has a second subsection in the guideline to Section 61a, while the Norwegian original text does not have this subsection.

### **Guideline to Section 61b**

The English version of the Guideline to the regulation is in Norwegian language instead of in English.

### **Guideline to Section 63**

The Norwegian version contains a subsection regarding a default yellow subcategory 3 if no knowledge of the degradation products is demonstrated. This subsection is not included in the English translation.

The English translation of this guideline section contains a sentence referring to strong acids and bases being yellow rated. This is not included in the Norwegian guideline to the regulations, but in the regulations itself, ref above comment to *Section 63, fourth subsection*.

### **Guideline to Section 66, first subsection**

The ninth subsection of the guideline contains a sentence in the Norwegian version that is not added to the English translation.

## Guideline to Section 69

The third subsection in the Norwegian guideline text is not included in the English translation.

### Some additional translation issues:

There are situations where an ambiguous or incorrect word has been used in the English translation, e.g.:

Section 68:

'...Borekaks med vedheng av vannbasert borevæske, og sand og andre faste partikler, kan slippes til sjø dersom innholdet av formasjonsolje er lik eller under ti gram per kilo tørr masse, med mindre annet følger av tillatelse etter forurensningsloven kapittel 3....'

'...Drill cuttings with **pendants** of water-based drilling fluid, and sand and other solid particles may be discharged to sea if the content of formation oil is equal to or less than ten grams per kilo of dry mass, unless otherwise permitted by the Pollution Control Act Chapter 3....'

There are other areas where the English is clunky or doesn't particularly read or flow correctly, e.g. :

Section 66, guideline:

'...Med smøremidler menes smørefett, tetningsoljer, giroljer og motoroljer....'

'...By lubricants is meant grease, sealing oils, gear oils and engine oils....'

We thank the authorities for consideration of these comments.

On behalf of EOSCA,

Nik Robinson.

Executive Secretary, EOSCA