

SANCTION NOTICE

To: **NEO Energy Production UK Limited**
Company Number: 12086835

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Date: **10 April 2024**

1. SANCTION

- 1.1. For the reasons given in this Sanction Notice, the North Sea Transition Authority (“**NSTA**”)¹ gives a Sanction Notice to NEO Energy Production UK Limited (“**NEO**”) for its failure to comply with a petroleum-related requirement and a Financial Penalty Notice which imposes on NEO a financial penalty of **£100,000** (one-hundred thousand pounds).

2. SUMMARY

- 2.1 Where there has been a failure to comply with a petroleum related requirement (“**PRR**”), the NSTA may issue a sanction under Chapter 5 of the Energy Act 2016 (“**the 2016 Act**”). A PRR includes a requirement imposed on a person by or under a provision of the 2016 Act which, by virtue of the provision, is sanctionable in accordance with Chapter 5.
- 2.2 Section 12A(1) of the Energy Act 1976 (“**the 1976 Act**”) states that the NSTA’s consent is required to flare or vent gas from a relevant oil processing facility or relevant gas processing facility.
- 2.3 On **8 December 2021**, NEO was granted an annual vent consent for the period **1 January 2022 to 31 December 2022** for an average of 1.035 tonnes per day, amounting to a cumulative limit of 377.78 tonnes for the 365-day period **1 January 2022 to 31 December**

¹ On 21 March 2022, the Oil & Gas Authority (“**OGA**”) changed its business name to the North Sea Transition Authority (“**NSTA**”). The abbreviation NSTA is used throughout this document to refer to both the NSTA now and when it was known as the OGA. The NSTA exercises powers under Chapter 5 of the Energy Act 2016 on behalf of the OGA. Any reference in this Notice to the exercise of power under Chapter 5 of the Energy Act 2016 refers to the NSTA exercising powers on behalf of the OGA.

2022 of natural gas to be released unignited into the atmosphere in connection with activities carried out under licences P735, P1041 and P1464, which related to the Donan, Lochranza and Balloch fields (the “**Consent**”). On **1 November 2022**, NEO confirmed that the Consent had been exceeded on **21 March 2022**. NEO exceeded the maximum annual consent by 1201.42 tonnes.

- 2.4 As Licence P735 was granted under section 2 of the Petroleum (Production) Act 1934, and licences P1041 and P1464 were granted under section 3 of the Petroleum Act 1998, consent of the NSTA is required to flare or vent.
- 2.5 NEO, without the necessary statutory consent, disposed of natural gas by releasing it unignited into the atmosphere (otherwise referred to as venting or cold flaring) between **21 March 2022** and **10 November 2022** (inclusive) contrary to section 12A of the 1976 Act (“**the Breach**”).

3. BACKGROUND

- 3.1 In **early October 2022**, a member of NEO’s HSE Team became aware of anomalies in NEO’s vent data and subsequently undertook a review of NEO’s venting logs. It was through this review process that it became apparent to NEO that cold flaring volumes had been incorrectly allocated to NEO’s flare consent rather than the Consent.
- 3.2 On **27 October 2022**, NEO received comments from the NSTA via the Energy Portal as part of the 2023 vent consent application process, where the NSTA noted that there was no contingency for potential cold flaring events in the vent consent application. These comments confirmed the conclusion independently reached by NEO that it was incorrect for cold flaring to be captured under the flare consent.
- 3.3 On **31 October 2022**, NEO informed the NSTA that *“we have reviewed our 2022 performance to date and it has become apparent that there have been a number of cold flare events [...] that will require us to apply for a variation to our 2022 consent. The total cold flaring that has occurred during these 2022 events to date, equates to circa 590 tonnes.”* On **1 November 2022**, NEO confirmed that the Consent had been exceeded on **21 March 2022**.
- 3.4 At a Consents Stewardship meeting on **3 November 2022**, NEO told the NSTA that *“cold flaring at the GPIII facility had been captured under the incorrect consent. Cold flaring had been allocated to the flare, instead of the vent consent. This was only recently brought to NEO’s attention, on investigation and review of the cold flaring events it was determined the vent consent was exceeded on the 21 March 2022.”*
- 3.5 On **8 November 2022**, NEO emailed the NSTA setting out that *“We have now completed our review (having checked through all shotgun records) for 2022 cold venting events. This has unfortunately resulted in an increase in the figure we initially reported for period 01/01/22 – 03/11/22 from 590Te to 1324Te YTD.”* These figures, provided by NEO, were provisional as it can take up to 3 months before Petroleum Production Reporting System data becomes available. Once finalised, NEO has said that between **1 January 2022** and **10 November 2022**, it vented 1579.2 tonnes (exceeding the maximum annual consent by 1201.42 tonnes).

- 3.6 On **11 November 2022**, a new consent was issued for the period **11 November 2022** to **31 December 2022** which permitted the venting of gas of up to 8.176 tonnes per day. It is noted that, if the Consent had provided for 8.176 tonnes per day rather than the 1.035 tonnes per day of venting that was originally permitted, NEO would not have exceeded the Consent.
- 3.7 NEO has set out that it did not cease production following identification of the vent exceedance on the basis that a shutdown and blowdown of Global Producer 3 (GP3, an FPSO), which would lead to depressurisation, would have resulted in increased flare volumes, an outcome which NEO did not consider would be environmentally prudent nor conducive to its overall target of reducing emissions. In addition, NEO engaged openly with the NSTA following identification of the issue and applied promptly for a new consent. NEO stated that, during engagement with the NSTA, there was no dialogue suggesting that an immediate cessation of production was required.
- 3.8 In **May 2023**, NEO stated that:

“[Its] flare and vent allocation process was not updated to reflect the changes provided for in the NSTA’s updated Flaring and Venting Guidance document published in June 2021. As such, NEO continued to allocate flare and vent according to previous guidance, resulting in cold flaring being incorrectly allocated against the flaring consent.”

Flare and Vent Consents

- 3.9 The introduction to the NSTA’s Flare and Vent Guidance provides the following description of the function of flaring and venting:

“Flaring and venting are controlled processes to dispose of gas, essential for emergency and safety purposes on oil and gas installations, and in situations where it may not be feasible for the gas to be used, exported or re-injected. Flaring is the ignition of gas, and venting is the release of unignited gas.”

- 3.10 The Flare and Vent Guidance defines venting as *“the release of unignited gas”*; this would include cold flaring, which is defined as:

“Gas passing through the flare without ignition – effectively venting of gas through the flare system. This refers to a period of time where there is no combustion (or zero combustion efficiency) i.e. it is not the non-combusted component of a flare gas stream where combustion efficiency less than 100% but greater than 0%.”

- 3.11 The Flare and Vent Guidance further sets out to Operators that:

“Operators must inform the OGA as soon as it becomes clear that there is a risk of flaring or venting consent breach; this includes notifying the OGA of new risks of, or unexpected increases in, flaring or venting. Requests for consent variations must be submitted in sufficient time for the OGA to consider the relevant details and respond accordingly.”

3.12 The NSTA considers that the effective management of flare and vent consents is a vital indicator of good stewardship of fields by operators and licensees. The management of flare and vent consents is an important component of a stable well-regulated environment in which industry, investors and the public can have confidence.

4. LICENSEES

4.1 NEO was the only licensee – and the Operator – for Licences P735, P1041 and P1464 which cover the Donan, Lochranza and Balloch fields at the time of the exceedance.

5. FAILURE TO COMPLY

5.1. Under section 42 of the 2016 Act, the NSTA has the power to give a Sanction Notice where it considers that a person has failed to comply with a petroleum-related requirement which is imposed on it. Section 42(3) of the 2016 Act defines a petroleum-related requirement as including: *a term or condition of an offshore licence.*

5.2. Section 12A of the 1976 Act specifies that the NSTA's consent is required for the disposal of natural gas "*by releasing it unignited into the atmosphere in connection with activities carried out under a licence granted under*" section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934, as applicable.

5.3 Licence P735 was granted under section 2 of the Petroleum (Production) Act 1934. Licences P1041 and P1464 were granted under section 3 of the Petroleum Act 1998. NEO's unauthorised vents in 2022 occurred in connection with activities carried out with licences P735, P1041 and P1464.

5.4 Section 12B of that 1976 Act provides that the requirements in section 12A are to be treated for the purposes of Chapter 5 of the 2016 Act as petroleum related requirements.

5.5 NEO continued to vent without the necessary statutory consent from **21 March 2022 to 10 November 2022** (inclusive), exceeding the maximum annual consent by 1201.42 tonnes.

6. THE SANCTION WARNING NOTICE

6.1. A Sanction Warning Notice was issued to NEO on **15 January 2024**, and NEO was given the opportunity to provide representations on the matters contained therein which was provided on **12 February 2024**. The NSTA has considered those representations, and these are summarised together with the NSTA's response, as follows:

NEO has co-operated fully with the NSTA and engaged promptly

6.2. NEO state that it "*has cooperated fully with the NSTA's investigation into this matter.*" The NSTA has given regard to NEO's overall engagement which is reflected in the final penalty amount.

The breach was not committed knowingly or deliberately

- 6.3. NEO state that *“it neither knowingly nor intentionally breached the vent consent. In reporting volumes under the flare consent, NEO was continuing to follow guidance which previously applied and which NEO (erroneously) considered still applied.”* The NSTA has considered carefully the facts surrounding this breach and how it occurred. NEO accepts that the change in the Flare and Vent Guidance was *“not picked up when it should have been”* but has put steps in place to correct the process. The NSTA has not inferred that the breach was done deliberately, but nonetheless, it occurred and was avoidable. Ensuring future compliance is expected and encouraged but does not ameliorate the breach.

The NSTA has failed to give regard to previous good conduct or consider senior management involvement

- 6.4. The penalty has been set in accordance with our published guidance and NEO’s prior conduct has been considered when setting the penalty. The NSTA has also considered the actions of senior management, which is reflected in the penalty as explained at paragraph 7.22.

NEO did not gain as a result of the incorrect allocation of vent against the flare consent

- 6.5. The NSTA notes NEO’s representations that it did not gain as a result of the breach, and this was considered when setting the penalty amount. The NSTA’s position remains that the penalty for the breach reflects the fact that NEO vented outwith consent and there was a failure of internal oversight to prevent the breach occurring.

The level of the proposed fine is disproportionate to previous NSTA financial penalties

- 6.6. NEO state that, in *“the absence of any published guidelines for the level of penalties to be imposed by the NSTA, we respectfully submit that reference to previous penalties imposed by the NSTA in respect of similar incidents should be considered”*.
- 6.7. The NSTA has published guidance, its Financial Penalty Guidance, on the matters to which it will have regard to when determining the amount of financial penalty to be imposed. The NSTA has considered the factors in its Financial Penalty Guidance in arriving at the **£100,000** figure, which it considers to be a proportionate sanction in this matter.
- 6.8. Further, the NSTA has considered the overall regulatory compliance that led to the breach (including length of duration, volume and remedial actions).

7. THE SANCTION IMPOSED

- 7.1. By section 12B(2) of the 1976 Act, the only available penalty for this type of breach is a financial penalty.
- 7.2. The NSTA issues this Sanction Notice requiring NEO to pay a financial penalty of **£100,000.00** (**“the Financial Penalty”**), within 30-days of the date of this Sanction Notice, to the NSTA in respect of the Breach, which will be paid to HM Treasury. In arriving at the level of the Financial Penalty the NSTA has among other things had regard to those matters listed at

section 8 of the 2016 Act, in particular the need to maintain a stable and predictable system of regulation which encourages investment in relevant activities, which appears especially relevant here.

- 7.3. The central objective of the financial penalty in this Sanction Notice is deterrence, with the penalty level being set at a sufficient level to reflect this and the seriousness of the breach. Taking enforcement action in respect of a failure to hold the necessary statutory venting and flaring consents helps to maintain a stable and predictable system of regulation by demonstrating how the NSTA is acting to ensure that regulatory obligations are complied with.

Consideration of the NSTA's Financial Penalty Guidance

- 7.4. In deciding the level of financial penalty to impose in respect of the Breach, the NSTA has had regard to its Financial Penalty Guidance.²
- 7.5. The NSTA has considered carefully the aims set out in paragraph 16 of the Financial Penalty guidance, which are that any financial penalty determined should be among other things:
- a. Effective in addressing the underlying cause for the failure to comply;
 - b. Dissuasive of future failure to comply, either by the person or, further to publication of the Sanction Notice, other persons in similar circumstances; and
 - c. Proportionate to the significance of the failure in the context of the petroleum-related requirement and the impact on the relevant persons.
- 7.6. The NSTA considers that it is appropriate to impose a sanction in respect of the Breach and that a financial penalty set at **£100,000.00** sends a strong message to NEO and other persons in similar circumstances that the NSTA takes compliance with the need to have appropriate venting and flaring consents in place seriously and to deter such behaviours in the future. In that regard, the NSTA considers that the level of the Financial Penalty is effective in addressing the underlying cause of the Breach and dissuasive of future failures to comply with regulatory obligations.
- 7.7. The NSTA considers that, a financial penalty of **£100,000.00** is proportionate to the seriousness of the Breach, noting that NEO did not identify the exceedance for approximately seven months which is a significant period of time for such an exceedance. The level of the penalty also reflects the mitigating circumstances (set out below), that there is no evidence that NEO explicitly sought to benefit from the failure to comply, and that NEO remedied the situation when it became aware of the Breach.
- 7.8. Paragraph 17 of the NSTA's Financial Penalty Guidance sets out various matters that the NSTA may also take into account when determining the amount of a financial penalty, as follows:

² [NSTA Financial Penalty Guidance, 4 November 2022](#). By section 45 of the Energy Act 2016, the NSTA must issue guidance as to the matters to which it will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice.

The extent to which NEO may have sought to benefit from the failure to comply

- 7.9. There is no evidence to suggest that NEO explicitly sought to benefit from the failure to comply.

Whether NEO gained as a consequence of the failure to comply

- 7.10. NEO continued to carry out activities in connection with licences P735, P1041 and P1464 despite not having the required statutory consent to release natural gas unignited into the atmosphere, a necessary aspect of operations carried out in connection with their licence. In this respect, the NSTA considers that NEO gained as a consequence of its failure to comply.

The severity of the failure to comply

- 7.11. The relevant petroleum-related requirement in this case is the requirement in section 12A of the 1976 Act to have the consent of the NSTA for natural gas to be disposed of by releasing it unignited into the atmosphere in connection with activities carried out under NEO's licences.
- 7.12. NEO has confirmed that, between **1 January 2022** until the new consent was issued on **11 November 2022**, it vented 1579.2 tonnes (exceeding the values permitted in the Consent by 1201.42 tonnes). This is significant in the context of the relevant petroleum related requirement.
- 7.13. The NSTA has repeatedly signalled to the UK upstream oil and gas industry ("**Industry**") that compliance with its regulatory obligations is vitally important to sustaining the industry's social licence to operate in the UKCS.³ A failure to comply with a vent consent has the potential to undermine public confidence in the ability of the industry to operate within prescribed limits which in turn impacts and/or affects the industry's social licence to operate, may undermine the confidence of investors, and potentially undermines the authority of the regulator. The NSTA has had regard to the factors contained in section 8(1) of the 2016 Act, noting in particular the need to maintain a stable and predictable system of regulation which encourages investment to be the most relevant in this context.

The degree of harm caused, or increased costs incurred by the failure to comply

- 7.14. NEO's failure to comply undermines trust and confidence in NEO's asset management and its oversight of its regulatory obligations.

Whether there are any relevant industry Codes of Practice

- 7.15. There are no relevant industry codes of practice governing flaring and venting.

³ See: [Open letter from the NSTA to licensees and infrastructure owners to outline the next stage of our regulatory approach, 4 June 2019](#); and the NSTA's [Thematic Review into Industry Compliance with Regulatory Obligations, 29 October 2020](#).

The duration of the contravention

- 7.16. NEO confirmed the Consent was exceeded on **21 March 2022** but was unaware that it exceeded its vent consent for approximately seven months; a significant period of time for such an exceedance.

Mitigating circumstances

- 7.17. Once it was aware of the exceedance, NEO acted quickly to obtain the appropriate consent required for their operations.
- 7.18. NEO has co-operated with the NSTA's investigation.
- 7.19. NEO has not had any previous conduct which was considered by the NSTA to breach a petroleum related requirement.
- 7.20. The NSTA has taken into consideration the above circumstances in setting the fine, which would have been considerably larger had these not been reflected.

Aggravating circumstances

- 7.21. There was an absence of appropriate internal mechanisms or processes to prevent the Breach occurring or to identify it at an earlier stage, which led to significant additional venting levels outwith consent, noting in particular that:
- a. NEO was unaware that it exceeded its vent consent for approximately seven months; a significant period of time for such an exceedance; and
 - b. NEO incorrectly allocated its cold flaring volumes into NEO's flare consent.

It appears that, having misdirected itself at the outset of 2022 by allocating cold flare volumes to its flare consent, the issue was compounded through the year and - because NEO stayed within its annual flare consent volume – it did not notice the error until **October 2022**.

- 7.22. Despite NSTA guidance, NEO stated that it was unaware that, from **June 2021** until it identified the exceedance in **October 2022**, it should have included cold flaring in the Consent. This is indicative of a misunderstanding of the regulations and an absence of internal mechanisms/processes, and lack of senior management oversight to prevent the failure to comply which the NSTA has reflected in the fine level.

8. PUBLICATION OF THE SANCTION NOTICE

- 8.1. Pursuant to section 53 of the 2016 Act, the NSTA may publish details of any Sanction Notice given in accordance Chapter 5 of the 2016 Act.