

From: Scott Coombs
Sent: 27 September 2011 08:53
To: Eamonn Murtagh
Subject: response to Consultation Paper CER/11/137

Mr Murtagh,

The attached Consultation Questionnaire is in response to the Consultation Paper on the High Level Design of the Petroleum Safety Framework (CER/11/137).

I tried to keep to the format of the questionnaire, but I would like to include the following general comment in my response:

I feel that the safety framework is fundamentally flawed as it doesn't appear to have considered the risks related to hydraulic fracturing for shale gas.

The document focuses on 'Major accident hazards' which really only consider things like explosions where there is a risk of immediate loss of life. It also only considers something a risk of a major accident hazard if it is connected directly to the gas reservoir. Therefore a spill of produced water from a tank would not be considered a major accident hazard.

It is unclear from the document who is ultimately responsible for petroleum safety, there is a lot of talk about co-operation with other agencies but there is no clear definition of where responsibility lies.

Thank you.

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Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Consultation Questions (in Microsoft Word format)
from the Consultation Paper on the High Level
Design of the Petroleum Safety Framework**

DOCUMENT TYPE:	Consultation Paper Questionnaire
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RESPONSES TO:	Eamonn Murtagh

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List of Consultation Questions

The following list of questions was included in the Consultation Paper on the High Level Design of the Petroleum Safety Framework (CER/11/137) as Appendix III. The aim of this document is to facilitate the process of responding to the Consultation Paper by allowing respondents to electronically complete the questionnaire.

Respondents are invited to complete the table to indicate their position on the questions being asked. Respondents should outline YES or NO answers to each of the questions listed. If you have a further comment which will clarify your answer, this should be included in the Comments box.

Please note respondents are in no way obliged to respond to the questionnaire provided and are welcome to submit comments in their preferred format. However when preparing responses respondents should indicate which question or proposal their text refers to.

Question/ Proposal		Do you agree?		Comments
		Yes	No	
Section 4. Proposed Scope & Components of the Framework				
1.	Please comment on the CER proposal to define the scope of the Petroleum Safety Framework to include all of the CER's functions under Part IIA of Act?	X		
2.	Please comment on the CER proposals to have a specific focus upon major accident hazards for the safety regulation of designated petroleum activities under Part IIA of the Act.		X	Placing an emphasis on major accident hazards should not have greater priority than the cumulative environmental and societal impact of petroleum activities. No all petroleum activities experience a major accident, but <u>all</u> of them have a cumulative effect on the natural and human environment – and these effects should get at least as much attention in the operation of this framework as the threat of a major accident.
3.	Do you agree with the proposed definition of major accident hazard, set out in section 3.2.2.3, in the context of the CER safety regulation of designated petroleum activities? Please comment.	X		
4.	Do you agree with the CER's proposed approach to carry out its function to monitor compliance by petroleum undertakings' with their general duty in co-operation with other existing statutory authorities?	X		
5.	Please comment on CER proposals for the main components of the Framework as: a) A Statement of Strategic Intent; b) ALARP Demonstration Guidance;	X		

Question/ Proposal		Do you agree?		Comments
		Yes	No	
	c) Agreed Interfaces, Co-operation & Co-ordination with Regulatory Authorities; d) A Permissioning System; e) A Compliance Assurance System; f) An Incident Investigation System; g) An Enforcement System; h) A Safety Reporting and Published Safety Information System; and i) A Continuous Improvement System.			
6.	Are there additional high level components which the CER should consider for inclusion within the Framework?			
Section 5: Strategic Intent of Petroleum Safety Framework				
7.	Do you agree that the proposed vision for the Framework should be: <i>A safe Irish petroleum exploration and extraction industry.</i>		X	The strategic intent should be extended to explicitly include the principles enshrined in the Aarhus Convention, namely “protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”. The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment. It had also been ratified by the European Community, which has begun applying Aarhus-type

Question/ Proposal		Do you agree?		Comments
		Yes	No	
				principles in its legislation, notably the Water Framework Directive (Directive 2000/60/EC).
8.	<p>Do you agree that the proposed mission statement for the Framework should be:</p> <p><i>To independently regulate petroleum exploration and extraction activities to protect life.</i></p>		X	The mission statement should also commit the Framework to “protect life and the well-being of the human and natural environments”. The CER’s primary function should also include the protection of Irish petroleum resources for the benefit of the Irish people and society.
9.	<p>Please comment on the proposed five key roles of the CER under the Framework as follows:</p> <ol style="list-style-type: none"> 1. <i>Foster and encourage safety in petroleum exploration and extraction activities;</i> 2. <i>Actively monitor & enforce compliance of petroleum undertakings with their obligations;</i> 3. <i>Promote a regulatory framework that encourages continuous improvement of safety;</i> 4. <i>Work with other authorities to achieve our vision; and</i> 5. <i>Provide safety information to the public.</i> 			<p>Role 1: “Foster and encourage” is not strong enough. “Establish, promote and uphold” makes the CER more explicitly responsible for a creating culture of safety amongst persons/organisations who engage in petroleum activities in Ireland.</p> <p>Role 4: The CER should work with community organisations and other representative bodies to achieve its vision – not just authorities that have statutory powers. For example, CER should also interface with An Taisce, local community groups, county councils, and county enterprise boards.</p> <p>Role 5: CER should be required to officially recognise and respond to reports into safety submitted by the public. Anecdotal reports from residents of impacted areas should be given extra credence.</p>
10.	Are there additional CER roles which should be set out in defining the strategic intent of the Framework?			The CER should conduct and publish research on petroleum safety, evaluate research on petroleum safety, monitor changes to the legislative framework, and ensure that Ireland’s regulatory framework upholds global best practice.

Question/ Proposal		Do you agree?		Comments
		Yes	No	
11.	<p>Please comment on the proposed three regulatory goals for the Framework:</p> <ol style="list-style-type: none"> 1. <i>That petroleum undertakings reduce risks to safety to a level that is ALARP;</i> 2. <i>That petroleum undertakings achieve safety performance commensurate with the best internationally; and</i> 3. <i>Engender confidence that the regulatory framework is protecting the public.</i> 		X	The goal should also be “that petroleum activities which cannot reduce risks to safety to a level that is ALARP <i>are not undertaken</i> ”.
12.	Are there additional high level regulatory goals which should be set out in defining the strategic intent of the Framework?			The CER should also review the regulatory framework, where responsibility is divided between other bodies (including the CER), to determine that it is both comprehensive and consistent, and that the mission of the various authorities that are involved in the regulation of petroleum activities, are not in conflict with each other.
Section 6: ALARP				
13.	Please comment on whether you consider the proposed basis of assessment that risk has been reduced to a level that is ALARP (as summarised in Figure 7) to be appropriate.	X		However, a safety permit should be withheld if the long term, cumulative effects of a petroleum activity are unknown, can only be estimated with a wide margin of error, or if the worst case scenario is intolerable or incompatible with ALARP principles.
14.	<p>Please comment on whether you consider it appropriate to set upper limits of tolerability for the following risk metrics relating to petroleum activities:</p> <ul style="list-style-type: none"> • Individual risk to workers; and 		X	<p>The risk metrics should also include</p> <ul style="list-style-type: none"> • Collective risk to a group of people or ecological area.

Question/ Proposal		Do you agree?		Comments
		Yes	No	
	<ul style="list-style-type: none"> Individual risk to members of the general public. 			
15.	Should societal risk be addressed within the Petroleum Safety Framework? If so, should it be treated implicitly and/or explicitly?	X		Relevance of societal values should always be considered, not just where there is a high level of novelty in the extraction process.
16.	Are there any other risk metrics which you consider should be adopted for the control of risks generated by designated petroleum activities?			<p>Two other metrics should be considered:</p> <ul style="list-style-type: none"> The long-term cumulative effects of extraction activities. The effects of a group of petroleum activities. In the case of natural gas extraction using hydraulic fracturing, the assessment of risk should not be based on individual well pads, but on all the well pads proposed and operating in an area (e.g., the Lough Allen Carboniferous Basin).
17.	Do you consider it reasonable for the CER to align proposed risk criteria introduced under the Petroleum Safety Framework with criteria adopted by the HSA for land-use planning purposes?	X		It should also consider planning policies and guidelines of An Bord Pleanala and the County Councils.
18.	<p>Please comment on whether you consider the Petroleum Safety Framework should introduce a lower ALARP limit in terms of individual and societal risk. If so, whether the lower limit should be:</p> <ul style="list-style-type: none"> left to the petroleum undertaking to set; or advisory? 		X	The lower limits should be advisory and the CER should explicitly reserve the right to make them enforceable in the future.
19.	If upper limits are introduced for either individual or societal risk, please comment on whether the limits should be:		X	Upper limits should be mandatory.

Question/ Proposal		Do you agree?		Comments
		Yes	No	
	<ul style="list-style-type: none"> ▪ left to the petroleum undertaking to set; ▪ advisory; or ▪ mandatory? 			
Section 7: Permissioning System and Designated Petroleum Activities				
20.	<p>Having regard to the requirements of the Act, please comment on the CER's proposed criteria for the designation of petroleum activities and associated infrastructure as follows:</p> <p>In order to be designated, a petroleum activity is required to meet each of the following criteria:</p> <ul style="list-style-type: none"> (i) the activity and associated infrastructure requires a petroleum authorisation. (ii) the activity has the potential to generate petroleum related major accident hazards. (iii) the activity and associated infrastructure is connected to, or has the potential to be physically connected to, the reservoir; and (iv) The petroleum activity is not entirely regulated by or under another Act of the Oireachtas and its designation allows for the optimum operation of the permissioning regime 		X	Also, The long term cumulative effect of the activity has been assessed and does not represent a major hazard.
21	Respondents' views are invited as to the specific application of the designation criteria to the construction and installation of petroleum			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
	infrastructure.			
22.	Please comment on the application of the proposed designation criteria to exploration activities.			
23.	Please comment on the application of the designation criteria to extraction activities.			
24.	Please comment on application of the designation criteria to conveyancing activities.			
25.	Please comment on application of the designation criteria to decommissioning activities.			
26.	Please comment on the CER's proposed approach to dealing with connected activities within the appropriate safety case rather than designation of such supporting activities.			
27.	Please comment on the six proposed principles underpinning the design of the permissioning system.			
28.	Please comment on the proposed approach for a Well Work Safety Permit and supporting safety cases.			
29.	Please comment on the proposed approach for a Pre-Construction Safety Permit and supporting safety case.			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
30.	Please comment on the proposed approach for a Production Safety Permit and supporting safety cases.			
31.	Please comment on the proposed approach for a Combined Operations Safety Permit and supporting safety case.			
32.	Please comment on the proposed approach for a Decommissioning Safety Permit and supporting safety case.			
33	Comments are welcome on how the CER should approach safety case assessments.			The safety case should also consider nature of communities impacted by the activities and the depth/nature/rate of the societal change - e.g., will a rural community be rapidly transformed into an industrialised one.
34.	Respondents' views are invited on how the 5 year safety case review process should be implemented, including comment on the options presented for the review process, and suggested alternatives.			
35.	Please comment on the above proposals regarding co-ordination of the CER permissioning system with other statutory processes.			
Section 8: Compliance Assurance				
36.	Please comment on the CER's proposed broad scope and approach to audit and inspection of petroleum undertakings?			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
37.	Please comment on the proposal that CER's inspectors can be a mixture of both in-house staff and third party independent competent persons.			
38.	Should the CER seek to co-ordinate its audit and inspection activities with other statutory bodies where possible?			
39.	The CER is interested in respondents views on whether the audit and inspection schedule should be risk-based and involve a few visits per facility per year, or should be undertaken on a prescriptive frequency and, if so, what frequency?			
40.	Please comment on the CER proposal that a Verification Scheme should form part of the Compliance Assurance system of the Petroleum Safety Framework.			
41.	Do you agree that if verification is adopted, that the verifier should be a third party independent person referred to as an Independent Competent Person (ICP)? Please comment.			
42.	If the ICP approach is adopted by the CER, who should contract the ICP – the CER or the petroleum undertaking?			
43.	Do you think that approval of the ICP is required and, if so, by whom?			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
44.	Should the CER, or a 4 th party audit the verification scheme?			
45.	Do you agree with the CER proposal that the Scope of Verification should be hardware Safety Critical Elements?			
46.	Do you agree with the CER proposal to apply the verification scheme offshore and onshore?			
47.	Do you agree with the CER proposal to apply the verification scheme throughout the lifecycle of petroleum infrastructure? Please comment.			
48	Do you agree with the CER view that a separate well examination scheme and well management audit scheme should operate? Who should conduct this scheme? Please comment.			
49.	Should ALARP be explicitly included within the verification scheme guidance? Please comment.			
50.	The CER is interested in respondents views on whether the CER should approve the verifications scheme in the scenario where the petroleum undertaking contracts the ICP?			
51.	Do you agree with the CER proposal to introduce a balanced set of leading and lagging indicators within the Safety Case Guidelines for routine reporting by the petroleum undertaking to the CER? Please comment.			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
52.	Please comment on the appropriate means for ensuring compliance by petroleum undertakings with their general duties, and the CER's proposed approach to monitoring.			
Section 9: Petroleum Incidents				
53.	<p>Please comment on the proposals for the following to be to be classified as petroleum incidents to be notifiable to the CER:</p> <ul style="list-style-type: none"> • All events/occurrences that result in the loss of human life; • Those events/occurrences which result in a personal injury to a member of the general public; • Those events/occurrences which result in personal injury which relate to a major accident hazard; • All events/occurrences that result in damage to the structural integrity of petroleum infrastructure; • All events/occurrences that result in the structural integrity of petroleum infrastructure being compromised; and • Near misses which have the potential to cause a major accident including the failure of plant and equipment or procedural failures which could have the potential to cause a major accident or could significantly impair an undertaking's response to a major accident. 			
54.	Please comment on the CER's proposed approach to the investigation of petroleum incidents and follow up actions.			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
55.	Please comment on the proposal that the CER will seek to liaise and co-operate with other relevant authorities in the incident investigation process?			
Section 10: Agreed Regulatory Interfaces and Co-operation				
56.	The CER are interested in respondents' comments on the proposed interface, co-ordination and co-operation arrangements. Specifically are such arrangements beneficial and are there other authorities the CER ought to have such arrangements in place with?			The CER should also interface with An Taisce, Local Community Groups, County Councils, County Enterprise Boards
57.	Please comment on the proposals for information sharing under the interface, co-ordination and co-operation arrangements?			
58.	Please comment on the proposals for greater alignment of the permissioning processes under different statutory regimes and inclusion for the interface, co-ordination and co-operation within arrangements with other statutory authorities.			
59.	Please comment on the proposals for co-ordinated audits/inspections and related information exchange under the interface, co-ordination and co-operation arrangements.			

Question/ Proposal		Do you agree?		Comments
		Yes	No	
Section 11: Enforcement				
60.	Please comment on CER's proposals on enforcement. In particular the proposals with respect all persons included on a petroleum authorisation submitting a joint safety case			
Section 12: Safety Reporting and Published Safety Information				
61.	Please comment on the CER proposals for the publication and content of the Annual Report on the Petroleum Safety Framework			
62.	Please comment on the CER proposals for the information it intends to publish			This framework (p. 24) says it will "provide information to the public "when appropriate" - appropriate should be defined by the interests of safety. All information should be made available except where it is proved that so doing would undermine safety.
63.	The CER is interested in respondents views on the criteria the CER should apply when considering an application by petroleum undertakings on the exclusion of certain information.			
Section 13: Continuous Improvement				
64.	The CER is interested in respondents views on the proposed approach to continuous improvement			

