

30 September 2011

Mr. Garrett Blaney
Commissioner
Commission for Energy Regulation
The Exchange, Belgard Square North,
Tallaght
Dublin 24

RE: Consultation on High level design of Petroleum Safety Framework (PSF)

Dear Garrett

Thank you for your letter of 3rd August 2011 seeking our views on the above Report. We apologise for missing your deadline and we hope you take our comments on board now. As you suggested, our inspectors worked with your team on its preparation and we are generally happy with its contents. Some minor comments are set out now.

As you are aware the Authority is responsible for enforcing workplace safety and health legislation in all Irish workplaces, both on shore and offshore, under the Safety, Health and Welfare at Work Act 2005 and we are required to exercise that responsibility in whatever workplaces we inspect. Offshore petroleum exploration and exploitation activities are also covered by the Safety, Health and Welfare (Offshore Installations) Act, 1987 and its associated Regulations. We need this to be recognised in any PSF which is agreed. Our Inspectors will be inspecting petroleum activities to be covered by the PSF from time to time and a certain amount of overlap with your Inspectors will occur. We fully support the comment made in Consultation Questions 4 and 9 which call for co-operation between existing statutory Agencies in monitoring compliance with petroleum undertakings. We are happy that our overlapping roles will be covered by the PSF. This is already allowed for in our current Memorandum of Understanding. I support the contact between your officers and our inspectors who are updating this MoU to accommodate our respective roles for Petroleum Safety so as to minimise the imposition on duty holders.

The Report notes that the PSF must set out the nature and scope of petroleum activities and petroleum infrastructure that need to be monitored by the CER and refers to the definition for 'Petroleum activities' in the 2010 Act. In reply to your Consultation Question 1 we would propose that the Authority takes the lead on monitoring compliance with onshore Petroleum processing activities which attract the Seveso II/COMAH Regulations 2006, while the CER take the lead on the 'major accident hazards' aspects of Offshore and Onshore Exploration and Exploitation Activities not covered by COMAH. This point is alluded to in Consultation Questions 2 and 3. We would continue to monitor the occupational safety and health aspects in the petroleum activities you would lead on and we would need to co-operate with you on a case by case basis so as to minimise overlap.

We would support the framework for enforcement as set out in Consultation Question 5 as we already follow many of your recommendations for our workplace inspections. The ALARP Principle which is covered by Section 6 in the Report and Consultation Question 11 fits in well with our 'so far is reasonably practicable' principle set out in our 2005 Act, which we also use for our COMAH sites and is acceptable. We can support your recommendation that for ALARP you align your risk profile to our Land Use Planning criteria. We would recommend you set an upper limit risk figure in any Guidance you prepare on Regulations rather than a mandatory figure.

We can support the comments made in Question 20 on the basis that point (iv) is complied with i.e. where the activity is covered by another Regulation you do not need to cover it in a PSF e.g. for COMAH/Seveso Petroleum sites. With regard to safety case assessment we recommend that your approach fits in with ours for Safety Report assessment under the 2006 COMAH Regulations. Likewise for your compliance assurance approach, audit and inspections, please compare your programme to ours, which we have built up extensive experience over the years. We do not require a Verification Scheme to form part of our inspection programme. However if companies have an independent verification scheme we will support it as its development helps companies comply with their legal responsibilities.

With regard to the notification and the investigation of petroleum incidents, there is a cross over with our responsibilities under the Safety Health and Welfare at Work Act 2005 and the 1993 General Application Regulations. The accident notification part of the 1993 Regulations is under review. When the new Regulations are ready for Public Consultation we will contact you again on these, particularly as you are proposing to prepare Petroleum Incident Regulations. Likewise when your proposed Petroleum Incident Regulations are being prepared we would need to consider them, so as to minimise overlap. For the moment we have agreed with your colleagues that we would need to set out in the MoU how we would both do our investigations, possibly together depending on the circumstances.

As stated above, we support greater co-operation and co-ordination of our activities as set out in Questions 58 and 59. Your enforcement proposals are similar to ours in the 2005 Act and are acceptable (Question 60). Likewise for Question 64 your proposals on Continuous Improvement dovetail into our requirements to have a safety and health management system in place in order to be able to demonstrate compliance with your regulatory responsibilities.

Both the consultation paper and the PEES Act do not define or quantify a Petroleum Major Accident in terms of damage to man or property, including the environment. This is done in Schedule 7 of the 2006 COMAH Regulations and we recommend that such quantification is necessary here. Finally in the event of any accident or dangerous occurrence at an installation, either offshore or onshore, which may be designated by the CER under the PEES Act, the CER does not have the powers to initiate proceedings in respect of any such incident. Perhaps this will be taken up in the proposed Petroleum Incident Regulations.

Please contact either of our ADR/Offshore Policy specialists, Blaithin Tarpey or Michael Boylan at 1890 289 389 if you want clarification on any of these points.

Yours sincerely

Martin O'Halloran
Chief Executive