

Tina Graham

Subject: CER12017(30) Draft Decision on HLD of PSF consultation - Response from Monica Grossman

To: Eamonn Murtagh
Project Manager – Petroleum Safety Framework,
Commission for Energy Regulations,
The Exchange,
Belgard Square North,
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29th March 2012

Dear Eamonn Murtagh

The High Level Design of the Petroleum Safety Framework

The following comments are made principally due to my concern over the proposed practice of unconventional hydraulic fracturing.

The draft decision paper lays out the 8 components of the Safety Framework quite clearly and it would seem that the CER have appeared to have taken on board many of the points raised in the consultation on the draft safety framework and tried to address them. However the responses do not address the main problem with the Safety Framework as it stands. The main problem is the attitude of the CER itself and the limitations and lack of responsibility it is prepared to allow itself by the rigid adherence to the definitions given to it by the Petroleum (Exploration and Extraction) Safety Act 2010 (The Act).

Strategic Intent

Under the Act, the CER is obliged to protect the public by fostering and encouraging safety and their duty is to do ALL things necessary and reasonable to further its objectives ie to foster and encourage safety but not to PROVIDE SAFETY.

This scope is far too narrow, the approach needs to be prescriptive not goal setting. For instance the statement that the goals are that undertakings should be ALARP, to best international practice and engender confidence. The CER should be setting the rules and telling the oil companies how they should operate not allowing them to identify their own risks albeit with a supposed Independent Competent Body to verify. It is not enough to merely foster and encourage but companies should be forced to operate safely with an absence of danger not simply avoiding or worse still mitigating dangers posed. The framework is limited to designated activities as defined by the Act and there is a focus on major accident hazards and although the draft decision paper states that this will be in addition to its wider safety regulatory responsibilities, how does the CER propose to actually know what those wider safety issues are unless it is prepared to look at not only operating safety (ie designated activity) but the long term questions such as environmental hazards which are undoubtedly a question of long term safety to the public, who the CER is charged with protecting. The designations in the Act offer the CER the chance to abdicate many of the responsibilities which would clearly be best shouldered by them as the overall body in charge of petroleum activities.

ALARP

The problem with ALARP is who decides. The idea that those who create and have control over risks are responsible for them is good but who decides what the risks are and how to manage them and whether or

not that is reducing them to ALARP? The goals that the CER sets itself to achieve confidence that risks are ALARP appear to be very clear but will the resources be available for the CER to achieve its objective. And once again the objective is only to foster and encourage safety and reduce risks to ALARP not prescribe and enforce. The minimum requirement for ALARP is stated to be good practice, de facto, reasonably practicable. Who will decide what is reasonably practicable? How will they decide? What will the decision be based on? Cost should not be an issue that is considered.

Under the Permissioning System, the CER is only required to designate certain petroleum activities where safety considerations render it appropriate and it will publish regulations that will define the activities that are to be designated and therefore those activities for which it is responsible. The system as described seems to be fairly thorough and comprehensive. There does appear to be a glaring omission in that there is no mention of disposal of waste products or regulation of emissions. Moreover, it is the petroleum undertaking that is required to: Identify safety critical elements; Determine the required performance of those elements to maintain risks ALARP; Establish assurance routines and to not only operate and maintain verification of the above but also to prepare it. In other words the petroleum undertaking will decide what is important in the first place. An Independent Competent Body will be required as verifier but who will choose the ICB and will the CER have the expertise to decide if they are competent and independent? Whilst the CER will publish Safety Case Guidelines, how will the CER decide what those are? How will Safety Case Assessment Procedures be decided upon? How will the CER decide if a petroleum undertaking is capable of implementing the safety management systems described in the safety case and also capable of carrying on the designated activities in compliance? Who will decide what is a material change to the Safety Case?

The draft decision paper states that if the information available for ALARP demonstration is limited and highly uncertain, which may be the case for very novel operations, undertakings will be expected to adopt the precautionary principle. On that basis ALARP would not be good enough and since it is to be the responsibility of the petroleum undertakings to decide how best to demonstrate how the risk from their operations is ALARP, they will be the ones providing the information on which the CER will base its assessment.

Compliance Assurance

The framework states that the CER will carry out inspections and audits. Will it have sufficient resources to do this? How will the CER ensure that its inspectors are independent and competent? The level of inspections suggested at one per year will not enforce compliance or assure safety particularly with regard to the progressive measures available for that enforcement.

Incident Notification

Under the Incident Investigation System, the petroleum undertaking will report any incidents – what if they don't? The fines described in the framework are very small when compared to the profits that petroleum undertakings can expect. There is again the question of accidents only being reported as soon as practicable – who will decide this? This type of loose regulation allows very many incidents to go unreported or be covered up sufficiently to prevent any meaningful investigation and prosecution.

Liaison with other Authorities

The framework states that the CER feels it will be difficult to get agreement over the many aspects governing its liaison with other authorities, this statement does not engender confidence that the respective authorities will work together to fulfil their various remits and although the CER aims to make every effort, this falls far short of the level of performance that the public should be able to expect and is likely to lead to many areas of lack of responsibility, duplication of activities and confusion in the various authorities and lack of compliance by petroleum undertakings.

Enforcement

The powers of enforcement described seem significant in particular with regard to contravention of the safety regulations being a criminal act, but the abdication of responsibility for all matters not falling under

designated areas in the Act will mean that many areas of activities by the companies concerned will not be covered and other organisations involved do not have the necessary powers of enforcement. Also as previously mentioned the levels of fines are very low and would not be considered punitive by the type of companies concerned.. A key omission again appears to be that there is no requirement under the framework for harm caused by non-compliance to be amended. The resources available to both the CER and other interested authorities will be key to the level of inspection, monitoring and enforcement that will be carried out and there is no mention of this in the framework.

I have attempted to cover the main areas over which I feel concern as an ordinary citizen but this list is not exhaustive and the main problem with the framework would appear to be that it should be based on a prescriptive approach with strict inspection, monitoring and enforcement.

Yours sincerely,

Monica Grossman

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