

Commission for Energy Regulation,
The Exchange, Belgard Square North,
Tallaght,
Dublin 24.

Attention: Mr. Eamonn Murtagh (Project Manager – Petroleum Safety Framework)

Our Ref: COR-01-SH-GM-1764

28th March 2012

**Re: CER/12/017 – Draft Decision Paper on the High Level Design of the
Petroleum Safety Framework**

Dear Mr Murtagh,

Shell E&P Ireland Limited (SEPIL) is in general agreement with the approach proposed in the Draft Decision Paper on the High Level Design of the Petroleum Safety Framework. We welcome the clarity provided regarding the issues raised during the public consultation phase of the Consultation Paper. We have contributed to and support the IOOA submission.

We outline below our main comments on the key elements of the Framework. We have used the numbering system adopted in the Draft Decision Paper.

Our detailed comments regarding the consultation questions can be found in the attachment to this letter.

5 ALARP

SEPIL welcomes the inclusion of qualitative and semi-quantitative risk analyses as approaches by which ALARP can be demonstrated.

We are concerned about the change in relation to the precautionary principle from the Consultation Paper which stated that it “is rarely applied to petroleum activities given the level of understanding, both of the possible consequences and frequencies of events arising from petroleum incidents” to now being included as one of the approaches by which ALARP can be demonstrated. We recognise that the CER qualifies the reference to it with a link to its application to ‘very novel operations.’ In our view, it is crucial that ‘very novel operations’ is clearly defined and that a policy similar to that of the UK HSE is used, i.e. that the precautionary principle should be invoked where the scientific information is uncertain and where it is impossible to evaluate the risk with sufficient confidence to move to the next stages of the risk assessment process.

We would also be concerned about the statement: ‘This may require the assumption that worst-case consequences are possible and the adoption of appropriate risk reduction measures without recourse to cost benefit analysis’, as this would not lead to a proportionate response and would go beyond what is ‘reasonably practicable.’

To be clear, SEPIL would not support the application of the precautionary principle to activities for which the risks are well understood and can be quantified with sufficient confidence.

6 Permissioning and Designated Petroleum Activities

SEPIL welcomes that the Permissioning system has been rationalised and aligned with the practice in other established jurisdictions. We welcome the definition that will be provided when the CER consults on and publishes the Designated Petroleum Activities Regulations. In our view, the Permissioning Process Map is a key document in providing guidance on the sequence and interfaces between the various permits and licences across statutory agencies. We are of the opinion that there should be clarity on which of the agencies will take the lead where an overlap exists.

7 Compliance Assurance

SEPIL supports the approach outlined in this section of the Draft Decision Paper. However, SEPIL is concerned about the potential for duplication of the proposed verification scheme with the existing verification requirements in relation to the Corrib Field Plan of Development approval.

9 Agreed Regulatory Interfaces and Co-operation

We fully support the CER’s objectives to avoid unnecessary duplication and regulatory burden, and to facilitate co-operation and assistance between the various authorities and the delivery of a consistent regulatory system. We await the detailed process mapping to identify the significance of potential overlap, however, where simplification and clarity cannot be made to meet the CER objectives by cooperation alone, the amendment of current legislation to enable clearer lines of jurisdiction and responsibility between the relevant regulatory authorities should not be ruled out.

Corrib Field Development

SEPIL is of course highly interested in the specific application of the Permissioning and Compliance Assurance activities to the Corrib Field Development, given that the project is already well advanced. SEPIL will seek clarity regarding the CER’s approach to, and acceptance of, the current verification work.

It would be helpful for the execution of the Corrib project if there was clarity in the near future about how the transfer of safety responsibility from the DCENR to the CER will be managed.

Cost Management

It appears from the Consultation Response Paper that the CER intends to levy the costs associated with developing the Framework and with the safety case assessment process on the petroleum undertakings. SEPIL is keen to participate in the consultation process

on this issue. In this regard, SEPIL supports actions to moderate costs such as the utilisation by the CER of existing resources within other regulatory bodies, e.g. there is clearly an opportunity in relation to documentation review, audit and inspection activities to co-ordinate activities with other agencies such as the HSA.

Discussion of submission

Regarding the opportunity to discuss this submission with the CER, we confirm that we wish to have a meeting with the CER. We welcome the opportunity to participate in the process during the Detailed Design phase of the Framework development.

Please do not hesitate to contact me should you have any queries in relation to our comments.

Yours sincerely

Gerry Costello
Regulatory Affairs Manager

Encl.
CER questionnaire

Question/ Proposal	Do you agree?		Comments
	Yes	No	
<p>Exec Summary</p> <p>1. Do you agree with the proposed scope of the Framework (as set out in Section 2)?</p>	Yes		<p>No comments.</p> <p>2.1 Relationship between the Act and the wider legislative and regulatory system</p> <p>We note that 'the Act (and by extension the Framework) does not replace or supersede any existing regulatory requirement upon petroleum undertakings or any existing functions of any of the above, or any other, statutory authorities.'</p> <p>2.2.1 Obligations and Duties on the CER</p> <p>We welcome that the CER will co-operate and consult with the NSAI, HSA, EPA, Minister of Transport, Tourism and Sport and the IAA to avoid duplication of activities in the performance of its functions. Where potential duplicated activities are identified, we would support the amendment of current legislation to remove such duplication although we understand from the Consultation Response Paper that 'At present there is no move by Government to make changes to the regulation of petroleum exploration and extraction activities which could further facilitate a clear separation of such roles.' See also comment regarding Section 9.1 on p. 8-9.</p> <p>2.3.2.1 Petroleum</p> <p>While hydraulic fracturing / unconventional gas</p>

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	Yes	No	
			<p>extraction are generally linked in the Draft Decision Paper, we note that hydraulic fracturing is a technology used for more than 60 years in more than a million wells.</p> <p>2.3.2.4 Designated Petroleum Activities</p> <p>As 'not all petroleum activities will be designated petroleum activities', it would be helpful if further clarity could be provided regarding those activities which will (or will not) be designated. See also comments regarding Sections 6.3.1 and 6.3.1.3 on p. 6.</p> <p>2.3.3 What is subject to regulation by the CER under the Framework</p> <p>We welcome the general alignment of the 'major accident hazard' definition with that in the COMAH regulations.</p> <p>No comments.</p> <p>4.1 Overview of Strategic Intent</p> <p>Regarding the regulatory goal "that petroleum undertakings achieve safety performance commensurate with the best internationally", we understand from the Consultation Response</p>
2. Do you agree with the proposed components of the Framework (as set out in Section 3)?	Yes		
3. Do you agree with the strategic intent of the Framework (as set out in Section 4)?	Yes		

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	Yes	No	
4. Do you agree with the proposed high level requirements for demonstrating ALARP under the Framework (as set out in Section 5)?	Yes	No	<p>Paper that the performance indicators will facilitate the measurement of and comparison with 'best internationally'.</p> <p>5.1 High Level Requirements for Demonstrating risks are ALARP</p> <p>SEPIL welcomes the inclusion of qualitative and semi-quantitative risk analyses as approaches by which ALARP can be demonstrated.</p> <p>We note that the reference to the precautionary principle has changed significantly from section 6.3.5 of the Consultation Paper which stated "The precautionary principle is rarely applied to petroleum activities given the level of understanding, both of the possible consequences and frequencies of events arising from petroleum incidents" to now being included as one of the approaches by which ALARP can be demonstrated. We recognise that many consultation responses referred to the precautionary principle in relation to unconventional extraction of gas and that the CER qualifies the reference to it by stating that 'for very novel operations, undertakings will be expected to adopt the precautionary principle.' In our view, it is crucial that the term 'very novel operations' in the CER's Framework is clearly defined and linked to the next point.</p>

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			<p>In relation to the precautionary principle, we recommend adopting a policy similar to that of the UK HSE as stated in their Reducing Risks, Protecting People book¹, i.e.</p> <p>“Our policy is that the precautionary principle should be invoked where:</p> <ul style="list-style-type: none"> - there is good reason, based on empirical evidence or plausible causal hypothesis, to believe that serious harm might occur, even if the likelihood of harm is remote; and - the scientific information gathered at this stage of consequences and likelihood reveals such uncertainty that it is impossible to evaluate the conjectured outcomes with sufficient confidence to move to the next stages of the risk assessment process.” <p>We suggest the removal of the following text on page 24 regarding the precautionary principle ‘This may require the assumption that worst-case consequences are possible and the adoption of appropriate risk reduction measures without recourse to cost benefit analysis’ as, in the European Council Resolution at Nice in December 2000², it states that ‘the council...considers that measures must observe the principle of proportionality...’. This is reiterated in the precautionary principle document</p>

¹ Reducing Risks, Protecting People, UK HSE, 2001.

² http://www.europarl.europa.eu/summits/nice2_en.htm#an3

Question/ Proposal	Do you agree?		Comments
	Yes	No	
			<p>by the UK Interdepartmental Liaison Group on Risk Assessment³ which states that “action in accord with the precautionary principle should i.e. be proportionate, consistent, targeted, transparent and accountable.” The current proposal in the CER’s document would not be proportionate and would go beyond what is ‘reasonably practicable’.</p> <p>We note that in the International Review Report⁴ there is no reference to the ‘precautionary principle’. However, we are aware of its application in some jurisdictions.</p> <p>To be clear, SEPIL would not support the application of the precautionary principle to activities for which the risks are well understood and can be quantified with sufficient confidence.</p> <p>6.1 Designated Petroleum Activities</p> <p>We welcome that the CER will consult on and publish Designated Petroleum Activities Regulations that will define the activities to be designated as further clarity is required regarding those activities.</p>
5. Do you agree with the proposed Permissioning System and associated designated petroleum activities under the Framework (as set out in Section 6)?	Yes		

³ <http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.pdf>

⁴ International Review Report refers to GL Noble Denton’s ‘Review and Comparison of Petroleum Safety Regulatory Regimes for the Commission for Energy Regulation.’

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			<p>6.3.1 Well Work Permit and associated Safety Cases</p> <p>With reference to 'All types of well work will require a Well Work Permit with the exception of routine operations for the purposes of well maintenance or monitoring of production or pressures', further definition is required regarding the term 'routine operations'. See also comment regarding Section 6.3.1.3.</p>
			<p>6.3.1.3 Non-Production Safety Case</p> <p>If the well work is to be carried out by a Non-Production Unit (e.g. MODU), a Non Production Safety Case will be required. It is SEPIL's understanding that where Well Service or Intervention Vessels are involved with well work, only in such cases where activities involve entering the pressure containment boundary of a well, for example with a tool or monitoring device, will a Safety Case be required. We understand that lower level activities such as well integrity/operability investigations (e.g. pressure gauge reading, subsea control module change-out, etc.) would not be subject to safety case requirements.</p>
			<p>6.5.1 Safety Case Revision</p> <p>Clarity is required regarding the definition of</p>

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	Yes	No	
6 Do you agree with the proposed Compliance Assurance System under the Framework (as set out in Section 7)?	Yes		<p>"material change".</p> <p>7.2 Audit and Inspections Regarding compliance assurance, we welcome and support that the CER will 'draw on existing expertise with the industry to supplement these resources where appropriate.'</p> <p>7.3.1 Facilities Verification Scheme We support the approach outlined in this section. We would propose aligning the definition of Safety Critical Elements with that in the UK Offshore Safety Case regulations, i.e. "safety-critical elements" means such parts of an installation and such of its plant (including computer programmes), or any part thereof— (a) the failure of which could cause or contribute substantially to; or (b) a purpose of which is to prevent, or limit the effect of, a major accident;'</p> <p>We are concerned about the potential for duplication of the proposed Facilities Verification Scheme with the existing verification requirements in relation to the Corrib Field Plan of Development approval.</p>

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	Yes	No	
7. Do you agree with the proposed Incident Notification and Investigation under the Framework (as set out in Section 8)?	Yes		<p>7.4 Performance Reporting</p> <p>We note that the CER will develop a balanced set of leading and lagging indicators which will be detailed in the Compliance Assurance Procedures. We understand from the Consultation Response Paper that these procedures will be issued for public comment.</p> <p>We would support that the memorandum of understanding with the HSA sets out how investigations would be conducted and that the CER considers the HSA's accident notification regulations when developing the CER's own regulations so that overlap is minimised.</p> <p>8.1 Incident Notification</p> <p>It would be helpful if, in the Petroleum Incident Regulations, further detail and clarity could be provided regarding item (b).</p>
8. Do you agree with the proposed Agreed Interfaces, Co-operation & Co-ordination with Regulatory Authorities component under the Framework (as set out in Section 9)?	Yes		<p>9.1 Overview of Proposed Interface, Co-ordination and Co-operation Arrangements</p> <p>We support the objectives listed in this section, i.e.</p> <ul style="list-style-type: none"> - avoid unnecessary duplication; - reduce regulatory burden, where possible; - facilitate co-operation and mutual assistance

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			<p>between the various authorities and the CER in relation to the carrying out of their respective statutory functions; and</p> <ul style="list-style-type: none"> - deliver a consistent regulatory system in Ireland for upstream petroleum activities. <p>In relation to the overlap between the COMAH regulations and PEES Act, we understand from the CER's Consultation Response Paper that: 'At present there is no move by Government to make changes to the regulation of petroleum exploration and extraction activities which could further facilitate a clear separation of such roles.' However, it is our view that amending the existing legislation would assist with achieving the objectives listed in Section 9.1.</p>
			<p>9.2.2 Alignment of permissioning processes</p> <p>We support and recognise the need for a Permissioning Process Map. This map will be essential regarding alignment of permissioning processes.</p>
9. Do you agree with the proposed Enforcement System under the Framework (as set out in Section 10)?	Yes		<p>10.2 Enforcement actions against petroleum undertakings</p> <p>Further clarity is required regarding the situation where there is a change of duty holder.</p>

Shell E&P Ireland Ltd. Comments

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	Yes	No	
10. Do you agree with the proposals for safety reporting and published safety information under the Framework (as set out in Section 11)?	Yes		No comments.
11. Do you agree with proposals for the continuous improvement process under the Framework (as set out in Section 12)?	Yes		No comments.