

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

Attention: Ms. Róisín Cullinan (Technical Analyst – Petroleum Safety)

Our Ref: COR-01-SH-GM-1825

9<sup>th</sup> August 2012

**Re: CER/12/091 – Consultation Paper on the Annual Petroleum Safety Levy Order**

Dear Ms. Cullinan,

Shell E&P Ireland Ltd. (SEPIL) has reviewed the content of the Consultation Paper on the Annual Petroleum Safety Levy Order and has responded to the questionnaire in the format requested in the attachment to this letter. In addition to the responses in our questionnaire we wish to stress the following points:

**Risk Based Petroleum Safety Framework**

SEPIL has from the outset fully supported the introduction of a risk based safety framework for the upstream oil and gas industry in Ireland and is committed to carrying on any petroleum activity in such a manner as to reduce risks to a level that is ALARP.

**Regulatory Overlap**

SEPIL considers that the upstream Irish regulatory regime has numerous legislative and regulatory overlaps, which result in additional administrative burden, schedule delays and costs for both the regulators and petroleum undertakings. In respect of the Petroleum Safety Framework (PSF) there appear to be overlaps between the functions of the DCENR, HSA and CER. We understand that each department or agency needs to act in accordance with the legislation underpinning its function but it is unsatisfactory to have these overlaps. As stated in our previous submissions, the amendment of current legislation to enable clearer lines of jurisdiction and responsibility between the relevant regulatory bodies should not be ruled out.

In your consultation paper reference is made to the Australian system for levying charges on the petroleum industry. In Australia they appear to have consolidated offshore safety and environmental regulation into a single authority. The situation in Ireland is far more complex despite the petroleum industry being an order of magnitude smaller than in Australia.

### **Offshore Petroleum Industry in Ireland and Petroleum Safety Framework set-up**

The offshore petroleum industry in Ireland is small by international standards and the level of activity is low. There will be an initial bow wave of activity to bring the PSF into operation and to ensure that petroleum undertakings are compliant. Thereafter with only Kinsale Energy and SEPIL operating gas fields and no funds committed at this time to develop further fields, it can be anticipated that there will be a low level of effort required to sustain the PSF post 2015. The CER should ensure that its organisation reflects this anticipated low level of activity to avoid an excessive levy burden on petroleum undertakings. This would also be consistent with the current text of the EU Offshore Safety Proposal<sup>1</sup> which states that ‘resources shall be commensurate with the level of offshore activities of the Member States.’

### **Costs and Cost Recovery**

While SEPIL welcomes and supports the introduction of a risk based framework for upstream facilities, the costs outlined in the consultation paper appear to be high.

It is SEPIL’s view that it would be premature for the CER to begin levying petroleum undertakings until the CER has completed the Detailed Design phase of the Petroleum Safety Framework and is in a position to discharge its key functions, i.e. to regulate the designated petroleum activities of petroleum undertakings with respect to safety and to issue safety permits, etc.

The proposal to recover the set up costs in the period 2013 – 2016, means in practice that those currently active in the industry would be levied with all of the set up costs, despite the fact that the PSF should, with minor modifications, have a life span of 10 years or more. We consider that this does not meet the fairness criteria set out in the Consultation Paper. We are of the firm opinion that the set up cost should be levied over a ca. 10 year period and that the CER should put in place the necessary financial instruments.

We thank you for the opportunity to comment on the consultation paper and we will continue to work with the CER to achieve safe operations in Ireland.

We confirm that we wish to have a meeting with the CER to discuss the content of our submission.

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

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<sup>1</sup> The current full title is ‘Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities’ (11 July 2012).

Question/ Proposal	Comments
<p>1. Respondents are requested to comment on the proposed evaluation criteria and to propose additional criteria (with associated rationale) if necessary.</p>	<p>SEPIL agrees that the concepts of fairness, simplicity and sustainability should be applied in allocating the levies. We consider fairness to be the most important criterion.</p>
<p>2. The CER requests respondent's views on applying the levy to all petroleum undertakings, as defined under the Act.</p>	<p>SEPIL agrees that, as defined under the Act, the levy should be applied across all petroleum undertakings. Our thoughts are that the size of the CER organisation reflects to a degree the potential for future exploration success and therefore some of the costs should be allocated to all petroleum undertakings.</p>
<p>3. Are there any other cost recovery arrangements that the CER should consider?</p>	<p>SEPIL is of the view that sufficient offshore levy regimes have been reviewed. However, as the CER intends to regulate onshore upstream facilities also then it would be helpful if the CER considered the cost recovery arrangements for onshore facilities in Australia, for example.</p>
<p>4. The CER requests respondent's views on aligning the levy development with the Australian levy system.</p>	<p>SEPIL agrees that the Australian levy system provides a reasonable basis on which to develop the CER's levy system. It is noted that in the Australian system "A Safety Case Levy is payable when a Safety Case for a facility is accepted by NOPSEMA." On that basis, it is expected that the CER would only charge a Safety Case levy when it accepts a petroleum undertaking's Safety Case. It is hoped that the CER levies would be commensurate with those applied in Australia. If the CER is unable to achieve levels that are similar to the Australian levies, then the CER cost base should be reviewed. In aligning with the NOPSEMA levy structure it would be expected that a transparent</p>

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	<p>approach would be taken on the cost structure. This would also be consistent with the requirements of the Petroleum (Exploration and Extraction) Safety (PEES) Act in relation to the separate identification of all elements of cost and revenue related to the CER's functions. As stated previously, it is noted that the Australian system refers to offshore developments only and that the CER should look at how onshore facilities are levied in Australia.</p> <p>It appears that in Australia there is one, sole safety and environmental regulatory body for the offshore petroleum industry (due to the Australian Government's intention to have a single national offshore regulator). This would appear to result in a fair, simple and efficient regulatory system and levy mechanism where industry is charged for the costs of one offshore petroleum safety and environmental regulatory body.</p> <p>In contrast, Ireland has the CER, HSA, Department of Communications, Energy and Natural Resources, Department of the Environment, Community and Local Government (Foresore Unit), Department of Transport (Coastguard) and EPA all regulating separate (but many overlapping) aspects of upstream safety and environment. The regulatory overlap results in additional administrative burden and costs to the industry from multiple regulators.</p> <p>SEPIL notes that the 'Proposal for a Regulation of the European</p>

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	<p>Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities' (11 July 2012) states that 'Where more than one body comprises the competent authority, Member States shall ensure that duplication of regulatory functions is minimised.' (Article 8, point 5)</p>
<p>5. The CER requests respondent's views on a minimum annual levy charge.</p>	<p>SEPIL supports the concept of a minimum annual levy charge for all petroleum authorisation holders.</p>
<p>6 The CER requests respondent's views on the authorisation types for which the minimal charge is proposed to apply.</p>	<p>SEPIL agrees with the proposal in relation to the authorisation types for which a minimal charge will apply as outlined in section 4.2 of the consultation paper.</p>
<p>7. Respondents are requested to comments and/or state their preference for:  <u>Option 1</u>: All costs (set up and annual operational costs) will be recovered via a single methodology (e.g. proposed alignment with Australian system); or  <u>Option 2</u>: Separate methodologies – The operational costs will be recovered via one methodology (e.g. proposed alignment with Australian system) and the Framework set up costs will be recovered via a different methodology (e.g. years remaining on a petroleum authorisation or reservoir capacity remaining)</p>	<p>SEPIL considers that Option 1 is more appropriate as it would be expected to meet the 'simplicity' criterion. It would be helpful if further details were available regarding the proposal for the recovery of the set up costs as these are not detailed in the Australian system.</p> <p>In relation to Option 2, we interpret the term 'reservoir capacity remaining' as 'reserves remaining'. Defining reserves is a highly complex task and we suggest this basis for cost recovery does not align with the criterion of simplicity.</p> <p>We note that the Consultation Paper states that 'there were no indications that industry funded the establishment and implementation of the regulatory body, as will be the case for the</p>

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	<p>Framework.’ We are of the opinion that further consideration needs to be given to a fair way of allocating the cost of the Framework set up. It appears that the CER intends to levy the current petroleum undertakings over a 3 to 4 year period for a Framework that can be expected to have a life span, with some updates, of 10 years or more. This would burden current petroleum undertakings with costs that in practice would benefit future entrants. SEPIL’s strong preference would be to see the cost recovery phased over a ca. 10 year period and that the CER should put the necessary financial instruments in place.</p>
<p>8. In relation to <u>Option 2</u>, respondents are requested to comment on their preferred approach to how the PSF set up costs should be recovered, and/or to propose additional alternative approaches if necessary.</p>	<p>See the response to question 7 above. We re-emphasise that the set up costs should be recovered over a ca. 10 year timeframe to meet the ‘fairness’ criterion and so that future petroleum undertakings which fall under the Petroleum Safety Framework would be levied also.</p>
<p>9. Respondents are requested to comment on the proposed ongoing operation of the annual levy.</p>	<p>It is SEPIL’s view that it would be premature for the CER to begin levying in February 2013 as the Detailed Design of the Petroleum Safety Framework will not be complete and the CER will not be ready to accept Safety Cases. Schedule 1, paragraph 16 of the PEES Act states that the CER may impose a levy to meet expenses properly incurred by the Commission in the discharge of its functions under this Act. In relation to the Commission’s functions, Section 13H(2) states:                      ‘(2) Without prejudice to the generality of subsection (1), the Commission’s functions under this Part are-</p>

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	<p>(a) to regulate the designated petroleum activities of petroleum undertakings with respect to safety, which may include specifying standards and codes of practice referred to in section 13L(3),</p> <p>(b) subject to section 13S to 13U, to investigate and report to the Minister on petroleum incidents,</p> <p>(c) to monitor and enforce compliance by petroleum undertakings with their obligations under this Part,</p> <p>(d) to issue safety permits, and</p> <p>(e) to provide safety information to the public when appropriate.'</p> <p>It is our view that the Commission will not be in a position to discharge the above functions until the Detailed Design of the Petroleum Safety Framework (PSF) is complete. We believe that it would not be correct to impose a levy until the PSF is fully established and implemented, i.e. until such a time as the CER can accept Safety Cases and issue Safety Permits.</p> <p>SEPIL is concerned that the annual levy will primarily be based on the size of the CER organisation and will not be reflective of the amount of work that needs to be carried out to regulate petroleum undertakings. Given the small size of the industry in Ireland and, based on past experience, the unlikelihood of a step change in the size of the industry, the CER should devise a strategy that does not burden the industry with continuing additional costs once initial set up and analysis of safety cases have been completed. We note that the 'Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas</p>

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	<p>prospection, exploration and production activities' (11 July 2012) states that 'Member States shall ensure that the competent authority has adequate human and financial resources to perform its duties according to this Regulation. These resources shall be commensurate with the level of offshore activities of the Member States.' (Article 8, point 4)</p> <p>As highlighted in our answer to question 4, one of SEPIL's major concerns is regulatory overlap, which is already an issue for the Corrib project and creates additional costs for both the State and SEPIL. We re-iterate the point from the aforementioned Proposed EU Regulation, i.e. 'Where more than one body comprises the competent authority, Member States shall ensure that duplication of regulatory functions is minimised.' (Article 8, point 5)</p>