

12th September 2013

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

File: Gov't/CER

Attn: Ms. Alice Hanly

Re: Consultation Paper CER/13/167 - Compliance Assurance System Guidelines

Dear Miss Hanly,

We have reviewed the above consultation paper and wish to raise a number of points of concern as outlined below.

In relation to section 2.1.1 we are concerned that the choice of selection of ICB has to be approved by the CER. We note that this goes beyond the practice of other jurisdictions and we believe it should be sufficient for the CER to establish the standards required of any ICB, leaving the petroleum undertaking to select an appropriate ICB for its circumstances. Ultimately, the responsibility for compliance under the PEES Act lies with the petroleum undertaking, who must be allowed discretion to organise its affairs independently.

A number of additional queries arise in relation to the approval authority of the CER (ref. 2.1.4):

- Where the CER approved ICB subcontracts a required expert in to assist, is this expert required to have ISO 9001 certification or equivalent?
- Where the CER approved ICB has self-employed contractors engaged in verification work, are all these deemed to be ICBs and requiring approval by CER?
- Will the verification work have to be put on hold pending approval of the expert/sub-contractors by CER?

CER may wish to review the logical consequences of these draft requirements.

In relation to section 2.2 'Verification Scheme Processes' which states that the Facilities verification scheme is comprised of activities to verify –"that the SCEs meet the performance standards from design through on-going operations", where a facility has been in operational phase for a number of years prior to the introduction of these guidelines, will the verification requirements be used retrospectively to require the production of design performance standards and assessment of initial suitability? Or will this requirement not be applied to previous phases of the facility lifecycle? The CER should clarify whether the guideline is intended to be applied retrospectively.

KEL Comments - Consultation Paper CER 13/167 Compliance Assurance Guidance Document

Document Reference	Comment
1.3.1 p5	This section indicates that following the guidelines is compulsory. This raises an interesting legal question. Are these guidelines law or guidance? In UK practice, compliance with guidelines is not mandatory if other equally effective means of complying with the law can be achieved. CER need to clarify the status of these guidelines.
1.3.2 p5	As per above comment - is this a legal requirement? CER should clarify this.
2.1.1 p8 para 3 and para 5	The approval by CER of the dutyholders choice of ICB goes further than current UK practice, where the requirement is for the dutyholder to appoint an ICB. In the scheme outlined in this document, CER have the power of veto over this appointment.
2.1.4 p10 para 3	In relation to the approval authority of CER: Question: Where the CER approved ICB subcontracts a required expert in to assist, is this expert required to have ISO 9001 certification or equivalent? Question: Will the verification work have to be put on hold pending approval of this expert by CER which could take up to 4 weeks? Question: Where the CER approved ICB has self-employed contractors engaged in verification work, are all these deemed to be ICBs and requiring approval under para 2.1 by CER? If so this seems unnecessarily onerous. CER may wish to review the logical consequences of these draft requirements before confirming them.
2.2.1 p11 para 2 and elsewhere	Where a facility is in operational phase, can this requirement be used retrospectively to require the production of design performance standards and assessment of initial suitability? Or would this requirement not be applied to previous phases of the facility lifecycle? CER should confirm whether the law is intended to be applied retrospectively.
2.3.2 p15	The commentary on production safety permits seems to partially answer the earlier point about retrospective application to earlier phases of the lifecycle, but does not explicitly refer to what will apply for an existing (operational) installation. CER need to clarify.