

26<sup>th</sup> September 2013

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

File: Gov't/CER

Attn: Ms. Roisín Cullinan

**Re: CER Consultation Paper 13/187 – Petroleum Incident Regulations**

Dear Ms. Cullinan,

We have reviewed the above referenced Consultation Paper and wish to make the following comments:

**General Comments:**

- 1 Section 13U-(1) of the PEES Act qualifies the reporting of a petroleum incident to those which may materially increase the risk of the following events occurring;
  - a) *Loss of human life*
  - b) *Personal injury being suffered by a person, or*
  - c) *Damage to property, the ownership of which is held by a person other than the petroleum undertaking concerned.*

It is suggested that the qualifications listed at a), b) and c) above are included in the definition of a "prescribed occurrence" within the regulations.

- 2 The reporting requirements of these draft regulations are significantly more demanding than those required under current Irish legislation. The HSA operates a well-established system of reporting occupational injuries and dangerous occurrences under the SH&W@Work (General Applications) Regulations, 1993. Similarly Schedules 7 & 8 of the Seveso Regulations (SI74 of 2006) clearly sets out criteria for notification of incidents to the Competent Authorities. Implementation of these draft regulations would lead to a 2 tier system of reporting by industry in Ireland, and inconsistency of reporting requirements nationally.

We suggest consideration should be given to using the reporting criteria as outlined in API754 '*Process Safety Performance Indicators for the Refining and Petrochemical Industries*' 2010, which are more appropriate for the reporting of uncontrolled releases of hydrocarbon vapours, hydrocarbon and non-hydrocarbon liquids.

## **Guidance to the Regulations:**

### **Section 1.2.1 of Guidance (pg.3) & Incident Notification Form**

Section 13A(1) of the Act includes in the definition of a petroleum incident an event which “*results in damage to the structural integrity of petroleum infrastructure*”. The requirement for reporting this type of incident is reflected in Point C of the Incident Notification Form “*Damage to the structural integrity of petroleum infrastructure*”.

The criteria for reporting this type of incident needs additional clarification, as the current statement is very vague and wide-ranging. Damage to structural integrity may not necessarily cause a material increase in risk unless structural integrity is compromised. The requirement to report should require consideration of the consequences, reflecting the scale of the incident in the context of level of risk.

### **Section 1.2.1 of Guidance (pg.3) & Incident Notification Form**

Section 13A(1) of the Act includes in the definition of a petroleum incident an event which “*results in the failure or malfunction of plant and equipment used as part of or in a manner closely associated with petroleum infrastructure*”. The requirement for reporting this type of incident is reflected in Point E of the Incident Notification Form “*Failure or malfunction of plant and equipment*”.

The criteria for reporting this type of incident needs additional clarification, as the current statement is very vague and wide-ranging. The definition of failure should require consideration of the consequences, reflecting the scale of the incident in the context of level of risk.

### **Section 3.1 of Guidance (pg.8)**

We are concerned about the wording “*CER shall be entitled to rely on any notification purported to be made on behalf of a petroleum undertaking*”.

Given the high level of communication which will exist between the CER and petroleum undertakings, it must be feasible for any “purported” notification to be properly verified.

## ***Draft Regulations***

Definition of “Prescribed Occurrence”: A number of “prescribed occurrences” as currently drafted, are very prescriptive in nature, and are not linked to the level of risk associated with the occurrence. We recommend inclusion of qualifying text from Section 13U-(1) of the PEES Act, as outlined in comment 1 above.

### **Specific comments:**

#### **Regulation 3(1).**

The use of threshold values for loss of containment results in very prescriptive reporting requirements without consideration of the level of risk associated with the release. In comparison, the HSE (UK) distinguishes between onshore and offshore releases, whether the release is indoors or in the open air and use 'potential' or 'results in the taking of action to prevent or limit .... fire or explosion' as a measure of potential consequence. CER may wish to consider this.

#### **Reg. 3(1) i. “Uncontrolled fire or explosion”.**

The word “uncontrolled” should be defined more precisely when related to fires and explosions. As it stands it could be inferred that anything short of total loss of a facility to fire or explosion would not necessarily be reportable. Both the HSA (through Schedule 12 of the 1993 Regulations) and the UK RIDDOR approach is to

classify a fire or explosion which requires consideration of the consequences rather than a purely prescriptive scenario. CER may wish to review this.

Reg. 3(1) ii. *“Uncontrolled release of hydrocarbon vapour exceeding 1kg”*.

It is not clear why a value of 1kg of gas released is chosen. Clarification of the term “uncontrolled release” is requested, e.g. is a leak of gas that is dispersed by ventilation and does not set off gas detectors, considered controlled?

Reg. 3(1)iii. *“Uncontrolled release of hydrocarbon liquids exceeding 100 litres”*.

The threshold quantity for reporting releases of hydrocarbon liquids should take into consideration the properties of different hydrocarbon liquids. As examples, the Seveso Regulations and API754 2010 set threshold quantities for reporting based on the hazardous properties of releases.

Reg. 3(1)iv: *“Uncontrolled release of non-hydrocarbon hazardous substances”*.

Clarification of the term “uncontrolled release” of a hydrocarbon liquid is requested. For example, is a chemical spill to drain, or a release that can be contained with minimal risk of personnel injury, considered a controlled release?

It is recommended ‘irritant’ and ‘harmful’ be excluded from the definition of “Hazardous substances” in the regulations. We believe inclusion of ‘irritant’ and ‘harmful’ does not take into consideration the reduced level of risk of a broad range of substances that are classed under these 2 categories.

Reg. 3(1) vii: *“Any collapse of any petroleum infrastructure or ‘any part’ thereof”*.

It is not clear whether this refers to catastrophic structural collapse or perhaps also to smaller sub-assemblies or components. How big does 'any part' have to be? The UK requirements refer to 'liable to jeopardise the overall structural integrity of the installation'. This point needs clarifying or qualifying by CER.

Reg. 3(1)ix: *“Inability of the stand-by vessel to remain on location”*.

There may be occasions, for example during adverse weather conditions, that the Standby vessel would move off location for the purposes of reducing the risk to the Standby vessel and its personnel. This is currently defined as a petroleum incident that would result in reporting to the CER. However allowing the vessel take shelter decreases the risk of 13(U)-1(c) of the Act (criteria c: *“Damage to property, the ownership of which is held by a person other than the petroleum undertaking concerned”*) from occurring.

It is recommended that qualifying criteria be applied to allow a Petroleum Undertaking invoke a heavy weather policy that requires standby or other vessels to stand off from the installation, without reporting to the CER.

Reg. 3(1) xi: *“Any instance of a person falling into water”*.

As written, this point could cover a very wide range of situations. This needs to be qualified to clarify the intention, namely for example that “persons falling overboard from offshore petroleum infrastructure” should be reported. CER should review this aspect and clarify the intention of the regulations in this respect.

### 3. *Petroleum Incident Notification Form*

Incident Classifications B(1), B(2) and B(3) specify reporting of personal injuries- the HSA have a well-established system of reporting occupational injuries under the SH&W@Work (General Applications) Regulations, 1993. Implementation of the reporting criteria as specified in these draft Regulations would lead to a 2 tier system of reporting by industry in Ireland, and inconsistency of reporting requirements nationally. Please provide clarification why the CER consider it necessary to adopt different and more stringent criteria than those of the HSA.

It should be recognised that the criteria for reporting personnel injury proposed by the CER is going in the opposite direction to that in the UK where, as of April 2012 under RIDDOR, the over-three-day reporting requirement for people injured at work changed to more than seven days. In comparison the CER are requiring reporting worker absence from work not exceeding 3 days. CER should review Point (B3) – “Worker -absence from work not exceeding 3 days—”.

We look forward to discussing these points at our meeting with CER on October 9<sup>th</sup>.

Yours sincerely,

M.V. Murray  
Head of Development Projects

c.c. A. McDonnell  
S. Davis