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Consultation Paper on the High Level Design of the Petroleum Safety Framework

We welcome the Department's decision to implement the recommendation of the Advantica Report and establish 'a risk-based framework for decisions ... to ensure transparency and consistency of the decision-making process'. We confine ourselves to two key issues.

1. We are concerned that the legislation fails to define 'safety'. [Strategic Intent of the Framework]

The Vision is given as:

'A safe Irish petroleum exploration and extraction industry in Ireland'.

The Mission then appears as

'to independently regulate petroleum exploration and extraction activities to protect life'.

The Petroleum (Exploration and Extraction) Act 2010 gives as the principle objective under the Act to 'protect the public by fostering and encouraging safety as respects the carrying on of petroleum activities.'

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It would appear to us that the word 'safe' here is equated with 'protect life', an interpretation supported by the Act 'to protect the public through 'safety'.

Petroleum exploration puts at risk much more than the 'life' of the public. If not fully regulated, it poses a threat to the environment. It poses a direct threat to water, in particular to aquifers – a risk greatly increased through horizontal drilling - to climate, and to many other environmental areas.

We would be concerned that there is:

- No definition of the word 'safe'. In this consultation document, 'Safety is therefore given its ordinary meaning, and dictionary definitions generally define safety as "the absence of danger"'. If the CER genuinely thinks that the 'absence of danger' is an appropriate definition of 'safe' in the context of this legislation then it should be spelled out. We would suggest that such a definition as the 'absence of danger' is on the face of it unworkable and misleading.
- No specific reference to protecting the environment (outside of 'life' and 'the public'). The word 'environment' must be included in the Vision/Mission and incorporated in legislation and regulations.

2. We are concerned that transparency/confidentiality is not conditioned by the regulations on Access to Information on the Environment

We would agree that 'A key mechanism to enabling accountability is transparency'. We note the consultation document's statement that 'Achieving transparency is a legitimate outcome for the CER, provided that of itself it does not compromise any other obligation (e.g. commercial confidentiality, security etc.) on the CER or another relevant statutory authority with whom it cooperates in the fulfilment of its duties.'

In this regard, we would draw your attention to the European Directive on Access to Information on the Environment and the Irish Implementing Regulations [S.I. No. 133 of 2007].

We have noted continual and persistent confusion within Government agencies in regard to the issue of confidentiality and security and make two points based on these Regulations which we feel must be incorporated in your legislation and regulatory system.

- **In regard to emissions to the environment, there are no cases in which this information may be refused to the public**

'Incidental provisions relating to refusal of information

10. (1) Notwithstanding articles 8 and 9 (1)(c), a request for environmental information shall not be refused where the request relates to information on emissions into the environment.'

It should at all times be mandatory to ensure that such information is made available in real time - notwithstanding issues of commercial confidentiality, etc.

Finally, we have many occasions to draw the attention to decision makers to section 10(4) of the Regulations

- **(4) The grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.**

In order to accord with this legislation, CER legislation and regulations MUST reflect the fact that any decision not to inform the public without delay of an 'incident' or 'issue' raised during reports, investigations, audits, etc., MUST have been weighed against the public interest.

Yours, etc.,

Tony Lowes