

7 February 2011

HSE Review, Energy and Communications Branch
Ministry of Economic Development
PO Box 1473
Wellington

Dear Sir

Submission: Offshore petroleum health, safety and environmental legislation review

Introduction

1. This submission is made on behalf of petroleum exploration and development companies operating in New Zealand by the **NZ Petroleum Exploration and Production Association**. The Association has an active and on-going interest in health, safety and environmental administration in New Zealand.
2. Our submission is structured to respond to the recommendations contained in the report. We would welcome the opportunity to meet with officials to discuss the report and this submission in due course.

Investigate Funding Mechanisms and Resourcing Options

3. This recommendation calls for the Government to investigate, as a matter of priority, options for cost recovery and the provision of additional sources of funding for the Department of Labour and Maritime NZ to deliver their existing regulatory functions.
4. The Association is opposed to the creation of separate funding mechanisms which directly recover the costs of delivering DoL and Maritime NZ services from industry, other than those which currently exist.
5. The report notes on page 26 that DoL funding currently comes from a general levy on employers - the *Health and Safety in Employment Levy*. All workplace health and safety inspection in New Zealand undertaken by DoL is funded by this levy.
6. The existing system of employer HSE funding clearly anticipates that some sectors, such as office workers, will contribute toward the levy, even though the inspectorate will rarely inspect their premises. Other industries with higher risks: such as mining, petroleum, forestry and commercial fishing, will draw more heavily on the Levy.
7. There is no cogent argument presented in the report to justify why the cost of offshore health and safety monitoring and inspection undertaken for the petroleum industry should be funded directly by the industry. The fact that such inspection is both technically complex and expensive to deliver is not sufficient reason to argue that the costs should be directly levied. There are many other industrial sectors in New Zealand where these criteria apply, and which are funded from a general levy.
8. If an alternative funding source to the above levy is worthy of examination it is that of the ACC model, where experience rating determines the level of payment.
9. The report observes that "*funding a specialist function such as offshore petroleum safety from a general funding pool would appear to pose considerable challenges*". This statement is unsupported by any evidence.
10. We see no reason why specialist petroleum inspectors cannot operate within a general framework as currently occurs. The health and safety inspectorate system in New Zealand is perfectly adequate to deliver satisfactory outcomes. The suggestion by the consultants that specific cost recovery from the

oil and gas industry be investigated avoids the reality that successive Governments have progressively underfunded the Department of Labour in this area for 20 years, to the point where a single inspector now attempts to do the work previously done by up to 10 people.

11. Put simply, the Government has historically been unwilling to pay specialist petroleum inspectors a competitive salary, nor provide them with adequate funding to implement the Petroleum Regulations effectively. That situation needs to be rectified.

Recommendation

12. That the Health and Safety in Employment Levy be increased to ensure that adequate staff resources and technical expertise is available to the petroleum inspectorate to efficiently administer the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999*.

Require Health and Safety Consideration at the Resource Allocation Stage

13. The Association supports the requirement for the Government being given powers to require applicants to provide them with information on relevant health and safety issues at the resource allocation stage.
14. We have reservations that this information should be collected directly by Crown Minerals. They have no in-house capability to do such work and no legal authority to do so without an amendment to the Crown Minerals Act. It would be better in our view if an assessment of health and safety issues was done by DoL and their advice forward to Crown Minerals. This ensures an appropriate separation of functions between agencies.

Require Strategic Environmental Assessments at the Resource Allocation Stage

15. The Association supports the requirement for the Government being given powers to undertake a Strategic Environmental Assessment prior to running a blocks offer, though we are opposed to MED (Crown Minerals) being given these powers. Crown Minerals has no capability in this area.
16. If an SEA is to be conducted in the EEZ prior to running a blocks offer then this is a function that should be given to the new Environmental Protection Authority who can provide advice to MED. There need to be appeal provisions so that is a general ability for anyone challenge the basis of that advice. The information being gathered needs to be of a strategic nature and not replicate information being assemble by companies doing a project specific EIA.
17. In the Territorial sea there is already a Strategic Environmental Assessment regime which allows detailed consideration of environmental matters. These are called Regional Coastal Plans under the Resource Management Act. If the Government considers that there are gaps in the RMA in relation to the consideration of offshore petroleum exploration then they should amend that legislation.
18. Outside the Territorial sea it has already been acknowledged that there are regulatory gaps in the EEZ. Whether the solution is to extend "RMA type" provisions into the EEZ has yet to be determined.
19. This report does note that the existing RMA provisions within the territorial sea entail a level of public involvement and consultation well beyond any overseas jurisdiction. It should be noted however that the 2008 Cabinet paper which MFE prepared on this issue did involve "RMA type" processes for the EEZ, which at the time industry was relatively comfortable with.

Co-ordination of Regulatory Responsibility and Organisational Capabilities for Health and Safety

20. The Association supports the Department of Labour retaining lead regulatory responsibility with respect to health and safety for our industry. The issue the inspectorate faces in effectively delivering against their legislation is simply one of adequate resourcing. There are insufficient staff and other financial resources to do the job properly. It is unreasonable to expect one person to run an effective operation for on and offshore petroleum, onshore coal seam gas and all geothermal operations in New Zealand.

21. Sufficient full time staff should be devoted to the petroleum functions for which the DoL is responsible. There should be increased inspections on high risk industries. There is no reason why the money for those additional staff should not come from the Health and Safety in Employment Levy. If the Crown wishes to levy the industry directly then we would expect to see a principled argument as to why the petroleum industry should be treated differently to other high risk sectors such as mining, forestry or commercial fishing.
22. The discussion paper suggests that the Government examine whether a specialised distinct unit within DoL be established, "*focussed on offshore oil and gas process health and safety management*".
23. The Association notes that such a specialised unit existed within the Mines Division of the Ministry of Commerce prior to 1991. It was moved to its current location in 1991 because the Health and Safety in Employment Act moved the responsibility for workplace health and safety onto the employer who had to take "all practicable steps" to ensure a safe working environment. Nothing has changed in the meantime. The HSE Act works well and has an appropriate focus on the employer ensuring they manage the risks associated with their operations.
24. In our opinion there is no need for a specialised unit of the type envisaged by the discussion paper, and which existed prior to 1991. The industry is not of sufficient scale to warrant the establishment of such a unit. As long as the existing petroleum inspectorate is adequately resourced it can undertake the functions detailed in the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999*, including aligning NZ practices with other regimes and developing specialist technical expertise.
25. This may require DoL to introduce a pay scale which reflects the expertise of the highly skilled people needed to populate a petroleum inspectorate.

Safety Case

26. The Association generally supports the proposed changes around the consideration of safety cases. This will require changes to the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999*. We welcome dialogue with DoL over those changes.
27. If the Government is concerned at the level of scrutiny around process safety at the time of drilling then the emphasis should be on providing more resources to the Department of Labour to enable the inspectorate to better assess safety cases prior to drilling.
28. Criteria should be established to measure such assessments and be published so industry is aware of the requirements before lodging blocks offers. These assessments should be fit for purpose for New Zealand. It is important that the necessary expertise is brought on board to do such assessments, given that proposal documents already include safety case assessments etc. There needs to be consultation among the various agencies with an interest in this issue to ensure the information being sought is appropriate.

Establish an Environmental Regulatory Framework in the EEZ and Extended Continental Shelf

29. The Association supports the recommendation in the report which suggests establishing a new regulatory framework for environmental assessment and approval in the EEZ and ECS. The report recommends that the new process should not aim to replicate the *complexity of the RMA*, and recommends a simple EIA requirement with the opportunity for public submissions but no appeal to the Environment Court on the merits.
30. Of far greater interest to industry is responsibility for administration of this new legislation, boundary issues with the Territorial Sea, and clear delineation in responsibilities between agencies.

Establish an Agency with responsibility for Environmental Regulation in the EEZ and ECS

31. The report notes that given Maritime NZ already fulfils functions in the EEZ they are a logical choice to administer new EEZ/ECS regulations. At this stage we are of the opinion that there needs to be further

dialogue between Government and industry before it is decided which agency will administer these new environmental regulations.

32. In addition to either the EPA or Maritime NZ delivering those functions, other alternatives include delegating powers from the EPA to Regional Councils on a case by case basis, or to the Taranaki Regional Council specifically - on the basis of their considerable experience in dealing with the offshore oil and gas sector in the Territorial Sea. The TRC has considerable expertise in dealing with the sector.
33. Whichever agency is given these powers, careful consideration is required to ensure a good fit with processes administered by Regional Councils under the RMA.

Consider Future Consolidation of Offshore Environmental Jurisdiction

34. We agree that this matter should be considered. It is however a significant body of work and would significantly delay the more modest changes to the existing regime anticipated by this report. This work should be programmed as a longer term initiative.

Consider Insurance and Liability Issues

35. Industry supports consideration of additional international conventions to which NZ should be signatory to improve liability and insurance issues.

Conclusion

36. The Association thanks the Ministry for Economic Development for the opportunity to make a submission on the consultant report. The above comments are provided to assist MED and other agencies in reviewing the recommendations and designing a cost effective and efficient regulatory regime for the offshore oil and gas industry.

John Pfahlert
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