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## **SUBMISSION ON REVIEW OF THE HEALTH AND SAFETY IN EMPLOYMENT (PETROLEUM EXPLORATION AND EXTRACTION) REGULATIONS 1999 DISCUSSION PAPER**

### **Introduction**

The Environmental Defence Society (EDS) welcome the opportunity to comment on the discussion paper.

EDS is a public interest environmental law group, formed in 1971. It has a membership that consists largely of resource management professionals. It operates by litigating on environmentally important matters and as an environmental think tank.

EDS released a policy paper titled *Governing our Oceans: Environmental Reform for the Exclusive Economic Zone* in 2011. This reviews the international context for management of the exclusive economic zone and recommends changes to the New Zealand framework. In 2012 we made comprehensive submissions on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011 ("the EEZ Bill").

We are commenting on this discussion paper as it is intimately related to the EEZ Bill and the Resource Management Act 1991. Well design of the best quality is the first line of defence against major oil pollution, as well as accidents.

### **Strengthening the regulations:**

- EDS strongly supports the strengthening of the Health and Safety regulations for petroleum exploration and extraction. The very best quality in well design and operation is the first line of defence against accidents and environmental damage.
- The discussion document proposes regulations of a similar level of other jurisdictions. The proposals represent a suitable level of regulation to ensure best practice in the industry.
- In New Zealand there are many challenges in mobilizing the specialist equipment needed to cope with oil and gas emergencies when they occur. For this reason it is especially important that our regulatory scheme is as good, if not better, than other jurisdictions.

## **Benefits and Costs:**

- The cost of the proposed regulation is modest when compared to the huge personal, environmental and reputational risks faced by industry and New Zealand in the event of an accident. It is also modest when compared to the scale of profits operators can achieve in this industry.

## **Chapter 2:**

- We support the proposed general and specific duties.
- We are concerned that these duties are limited by the use of the terms “practicable”, “reasonably practicable” and “appropriate”. The use of the term “appropriate” does not seem necessary. While the use of the term “practicable” is appropriate, given that risk can never be completely avoided, this term requires operators and regulators to make a judgement call. More certainty could be achieved by defining the term “practicable” in the regulations. The definition should state that it does not involve balancing the costs and benefits of measures but, rather, that measures should be adopted except where they involve a grossly disproportionate sacrifice (in terms of time, money or other sacrifice).

## **Chapter 3:**

- We agree with the proposal to replace existing provisions with goal setting regulations, however these must be combined with approved codes of conduct to provide detailed guidance of best practice for operators. This will ensure that the right mix of flexibility and ensuring a bottom line is achieved.

## **Chapter 4:**

- We agree with the proposal to require mandatory notification and reporting of dangerous occurrences. This will increase the amount of information available to assist in the prevention of accidents.

## **Chapter 5:**

- We agree with the proposal requiring operators to demonstrate effective consultation and participation of the workforce. This will improve the information used to prepare safety cases.
- We *strongly* support the proposal to introduce legal powers to prohibit the commencement of operations where there are serious shortcomings in an operators’ safety case. This is normal practice in any field of regulation and is essential to ensure the regulations achieve their purpose.
- We also support the proposal to allow the withdrawal of acceptance of a safety case. It is appropriate where the operator has failed to comply with its duties under the regulations, the revision triggers, or if a revised safety case has been rejected.
- We also support provisions allowing the revision of safety cases. This recognises that there will be may be changes in an operation and there will be regular developments in what is considered best practice. It is important safety cases remain up to date.

- We agree that it is appropriate for the Department to recover full costs for the reasons sets out in the discussion document.
- We agree with the intent of the proposed changes to the particulars to be included in the safety case. We do not have the expertise to comment on the individual particulars, except to the extent that the operator should be required to provide information about their safety record in New Zealand and overseas and details of any improvements they have made to their health and safety procedures following any accidents.

#### **Chapter 6:**

- We agree with the proposal to extend the safety case regime to onshore production facilities. Although onshore facilities are considered less risky than those located offshore, they still face serious and complex risks which must be managed. The changes should clearly include exploration and other drilling, as well as production. We agree that the regime should be the same as that applicable for offshore facilities. A different regime would be unnecessarily inefficient.

#### **Chapter 7:**

- We agree that the qualification “all practicable steps” should only be used where required and that its use is appropriate in goal setting regulations only. As stated above, a definition should be inserted specifying that “all practicable steps” means that all feasible measures should be adopted except where they involve a grossly disproportionate sacrifice (in terms of time, money or other sacrifice).
- We agree with the proposal to allow operators the flexibility to select the standards to be applied. However, there should be some guidance provided by the Department regarding which standards it considers best practice.

#### **Integration:**

- The management of how wells are drilled, operated, plugged and abandoned is important for health and safety, environmental protection and maintaining the integrity of subsurface resources.
- It is inefficient to supply a separate set of regulations to manage wells in relation to each of these public interests.
- Regulations made under the Health and Safety in Employment Act 1992 are confined to those “relating to the health or safety of employees or other people”. While these regulations may protect the other public interests in well management, as an indirect consequence, this is not necessarily the case. This creates a gap in the system.
- We therefore support the submission of Barry Barton, Professor and Director of Centre for Environmental, Resources and Energy Law (“CEREL”), recommending an integrated approach to the regulation of well design that:
  - addresses all the different public interests identified above;
  - avoids regulatory overlap and policy silos;
  - has a sound institutional footing in expertise and resourcing, suitable for the size of the workflow in New Zealand, in the form of a Well Safety Unit; and
  - has a sound legal footing for integrated decisions and action.

**Other activities:**

- The review of the regulations does not catch the full range of activities involving well drilling. We support the submission of Barry Barton, Professor and Director of CERAL suggesting that the regulations should also control the risks associated with:
  - exploration wells,
  - plugging and abandonment, and
  - wells drilled for non-oil and gas purposes such as carbon capture and storage.

**Conclusion**

EDS welcomes the review of the health and safety regulation of petroleum operations. High quality well management is vital for health and safety, environmental protection and maintaining the integrity of subsurface resources. In general, we support the proposals contained in the discussion document. We also support the recommendations of Barry Barton, Professor and Director of CEREL related to integration and managing the full range of well drilling activities.

Yours sincerely,



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