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Press Release

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Major - potentially fatal - setback as regulator caught out.

Fracking opponents draw first blood - CER's claim to be "safety regulator to the onshore oil & gas industry" does not stand up to scrutiny.

In the absence of legislation which complies with COMAH no onshore operations can lawfully go ahead.

TALAMH – protecting natural wealth – have brought to light that the latest round of Public Consultation by the Commission for Energy Regulation [CER]¹ reveals a gaping hole in the Safety Regulator's primary legislation, where it is not compliant with Irish and EU Regulations² to provide for onshore safety in relation to the people who live and work near industries which use dangerous substances, including those associated with Unconventional Gas Exploration and Extraction.

The latest Consultation round involves public access to "Safety Cases" - the document that regulates the operational safety procedures for potentially dangerous activities in the oil and gas industry. It should have dealt with the local community's right to know exactly how dangerous the processes are and to be compulsorily provided with all the necessary information on safety measures and emergency plans which would need to be followed in the event of an accident.

Instead, the CER have only asked us to discuss their proposals to **RESTRICT** the information which will be made public, and **omits**, in its latest Safety Framework consultation paper, any reference to informing the local community of its right to know; instead claiming it can make the people apply for the information and pay for it, in contravention of the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006 / S.I.No.74/2006 [COMAH], which **requires** petroleum undertakings to give such clear information.

There is clearly a gap in the statutory responsibilities of the Commission if, as it now claims, it is the Permissioning Authority for the Onshore as well as the Offshore Oil and Gas Industry. When CER set out to establish itself as the new Safety Authority for oil and gas, it walked into the massive public uproar against the proposal for "fracking" in Ireland. CER was completely unprepared for the situation and was unable at first to explain its function with regard to this industry. Since that time it has attempted to encompass the fracking industry within its remit.

The approach taken by CER is only consistent with Petroleum Gas Exploration and Extraction **offshore** [where there are no local communities to be informed] but is a serious violation of the people's rights and of both Irish and EU safety regulations if it were to be applied **onshore**. This throws into serious doubt whether the primary legislation - the Petroleum (Exploration and Extraction) Safety Act, 2010 - was ever intended to be or can be safely used to regulate activities onshore.

Without proper safety regulation any licensing by the Government for onshore operations is NEGLIGENT. Although we await the CER's response to our points regarding compliance with Irish and EU Safety Regulations, the spotlight must also now fall on the Minister at the Department of Communications, Energy & Natural Resources [DCENR], who has responsibility for issuing licences and leasing oil and gas resources. **The reality is that in the absence of legislation which complies with COMAH no onshore operations can lawfully go ahead.**

Talamh has also made it clear to CER that it is not satisfied with the way they handled the previous long awaited Public Consultation on the crucial issue of Safety Case Criteria within the ALARP Demonstration Document. Respondents to the consultation raised their concerns about "cumulative risk" occurring due to the inherent proliferation of major accident hazards associated with the Unconventional Gas [UG] Industry operating onshore. CER gave some consideration to this, but stated that if "*sources are at discrete, well-separated locations onshore, it would not be possible for a person to be affected from more than one source.*" The UG industry predicts well "pads" of several acres each being situated a mere two kilometres apart. These are neither discrete nor well-separated and CER is ignoring this reality of the fracking industry.

CER write in terms of "total risk" without any definition of what that term means. In fact, risk terms that were clearly defined from the outset of consultations have now had their definitions removed. Talamh's comments on "Individual Risk" tolerances from multiple accidents were dismissed by CER by claiming that we were referring to one big accident.

The "Precautionary Principle" was often invoked by respondents with regard to fracking. Talamh went to great lengths to point out that the CER's version of the Principle was fundamentally different to what is understood generally by its use. CER, for whatever reason, ignored Talamh's comment.

The basis for Permissioning by way of Safety Cases is derived from Public Consultation and a meaningful assessment of the responses.

CER's dismissive approach to public concerns, particularly from those living and working in the affected regions, and the omission from the primary legislation of proper provisions for safety information to be given to the local communities, has undermined the entire basis for Safety Case Permissioning for onshore activities and throws its legitimacy into serious doubt.

Andrew King, Chairman

¹ CER's Consultation Paper on Safety Case Publication Policy, cer13109.PDF:
<http://www.cer.ie/en/petroleum-safety-current-consultations.aspx?article=900e685e-82a4-41a8-a814-677d75ac85de>

² S.I.No.74/2006 - European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006:
<http://www.irishstatutebook.ie/2006/en/si/0074.html>