



CANADIAN ASSOCIATION
OF PETROLEUM PRODUCERS

Canada's Oil and Natural Gas Producers

May 2, 2016

Cheryl McNeil
FORRI Project Manager
Natural Resources Canada
580 Booth Street
Ottawa, ON K1A 0E4

Dear Ms. McNeil:

Re: CAPP Comments on the Frontier and Offshore Regulatory Renewal Initiative's (FORRI) Proposed Policy Intentions for Phase 1 of the Framework Regulations

The Canadian Association of Petroleum Producers representing our members who explore for, develop and produce crude oil and natural gas in Canada wish to thank you for the opportunity to provide comment on the Proposed Policy Intention Document ('Document') for Phase 1 of the development of the Framework Regulations.

Following receipt of the Document CAPP assembled a task group of our members with interests in the offshore areas of Canada, to review the Document and provide feedback so that we could compile and submit a collective industry view to the FORRI Steering Committee. Our general views are contained in this letter and attached is a table containing specific comments on various Parts and Sections of the Document. In addition we have also attached some comments on the current Drilling and Production Regulations based on our experience in dealing with these regulations over the past five years. As discussed at the stakeholder meeting in Ottawa it was suggested that we include any comments we have on those regulations in this submission as they may help in the new regulation development.

2100, 350 – 7 Avenue
S.W.
Calgary, Alberta
Canada T2P 3N9
Tel 403-267-1100
Fax 403-261-4622

1000, 275 Slater
Street
Ottawa, Ontario
Canada K1P 5H9
Tel 613-288-2126
Fax 613- 236-4280

1004, 235 Water Street
St. John's, Newfoundland and Labrador
Canada A1C 1B6
Tel 709-724-4200
Fax 709-724-4225

360B Harbour Road
Victoria, British
Columbia
Canada V9A 3S1
Tel 778-410-5000
Fax 778-410-5001

CAPP would like to express our broad support of the FORRI objectives, which include:

- Reducing redundancy amongst multiple regulations;
- Bringing standards up to date;
- Moving to performance-based requirements instead of prescribing specific technologies/approaches; and,
- Ensuring an efficient and effective regulatory regime.

As the FORRI Steering Committee and Project Team work through the various phases of the Framework Regulation development it may be helpful to be guided by these principles below which aided our review and comment development:

- **Fair and transparent**, creating competitive parity across competing jurisdictions
- **Science-based, and consistent with other reputable international jurisdictions**, with a strong understanding of implications in practice
- **Clear, predictable and simple to administer**, with clear and established process for review and withdrawal
- **ALARP (as low as reasonably practicable)**, reflecting the balance of risks and benefits
- **Balanced and efficient**, recognizing the totality of policies and regulations on industry
- **Viable**, with readily available compliance pathways
- **Consistent**, with the overall objective of responsible development of Canada's frontier and offshore resources
- **Foster an internationally competitive oil and gas industry** that attracts capital investment.

With these principles in mind our general comments on both the consultation process and the Document are as follows:

1. **Performance-Based Regulation.** CAPP has long been an advocate of the development and implementation of performance-based regulation. We believe that this will support a more competitive frontier and offshore sector and achieve higher levels of environmental and safety performance. This is the case in many international offshore jurisdictions that use this style of regulation. In this regard it would be useful to understand the underlying philosophy being employed by the FORRI Steering Committee in deciding how best to implement its policy development – either through performance-based regulation or prescriptive regulation. Such philosophy is not evident to industry in the Document.

Furthermore, performance-based regulations are significantly undermined and diluted if regulators subsequently produce guidelines, or other tools, that are prescriptive and considered mandatory. CAPP appreciates that certain areas of environmental protection and safety may not be appropriate for performance-based requirements; however, for those areas where deemed acceptable, governments and regulators should be encouraged to maintain performance-based

standards in not only their regulatory document development, but also in their regulatory approach. If associated Board guidelines are required they should provide the normative basis to demonstrate the regulator's expectation of how the regulation can be met.

There are a number of places in the Document where we provide comments on the use of unnecessary prescription and suggest an alternative approach. Section 2 - Management Systems in particular is written as a hybrid of performance based and prescriptive requirements and as written can result in additional and unnecessary work for operator staff. For example there are prescriptive requirements for hazard, codes and standards inventories, but no explicit expectation for their purpose. This will result in reduced predictability in particular with respect to application of codes and standards as facilities age. Similarly, there are expectations for data management systems to support trending and a records management system for data. While this certainly represents current practices, they remain prescriptive expectations, rather than performance expectations regarding continuous improvement and record management. Further, the Document makes no effort to distinguish between what is a functional requirement and what is a prescriptive requirement. This is especially the case in Section 2.1.

We also encourage the FORRI Steering Committee to collaboratively develop a transition strategy or strategic plan that ensure the Boards have the necessary skills and structures to support performance based regulation implementation. We feel this would help the Boards in their role in enforcing a different type of regulation than they may not be used to and should result in any guidelines being less prescriptive.

2. **Safety Culture.** CAPP supports the goal of building and maintaining a strong safety culture and note that this is integral to our members' current approach to safety and management systems. We hold the view that the definition as proposed in the Document is not appropriate for a regulation as it is subjective, references people's feelings and would be difficult to measure and demonstrate compliance. This section should be removed in its entirety from the Document.
3. **Management System.** CAPP agrees with the intent and purpose of the proposed changes to the Management System (MS) requirement of the Document, which elevates the importance for good Safety and Environmental MS. However, considering one of the objectives of the regulatory renewal is to modernise and move to a performance based regulatory regime, this section on Management System is very detailed and prescriptive. The Document describes in prescriptive detail elements of a management system whereas the final regulation should state the requirement for a management system at a very high level. We have provided some comments on specific subsections where we feel it is unnecessarily prescriptive and also appear to us to be ambiguous.

As well greater efficiencies could be realized by including and capturing these MS requirements in the operator's submission of the Safety Plan to the Boards for review and acceptance. This will;

- Provide an opportunity to update the Safety Plan Guidelines to include the requirements of Management Systems and Safety Culture.
- Reduce overlap between having separate MS, Safety Plan and EPP submissions. We would recommend to include all MS-related aspects in the Safety Plan submission to the Boards.

4. International Standards. Consistent with the FORRI objective to make use of performance-based regulations, CAPP encourages the FORRI Steering Committee to minimize the use of references to codes and standards in the Framework Regulation and rather allow industry to propose standards as the means by which to demonstrate meeting the performance requirements of the Framework Regulation. Where this is impractical the use of reputable international standards would be preferred. The Framework Regulation for example, should reference where possible the goal of a provision to allow Operators to utilise industry best practices, which change and evolve over time.

5. Board Powers and Interpretation of Regulations. Fair and consistent application of Board powers is essential for ensuring public and stakeholder confidence in the regulatory process. As such, it is imperative that any policy clearly and explicitly articulate the rights of both the regulator and the regulated. This should include the establishment of a timely mechanism whereby Industry can appeal Board judgements/decisions. This would be beneficial for both Government and Regulators as it will help ensure public and stakeholder confidence in the regulatory process.

The Document as written indicates no expectation of due process, no means of recourse in the event of a disagreement other than what would be divisive options available through the Act and no expectation that the Board interpretation of a regulation is defined and documented. In a performance based system the objective should be fewer directives, and more collaboration – i.e., the regulator must be able to both define and justify, within the requirements of the regulation, their interpretation.

In addition as there will be one set of Regulations governing operations in all areas of Canada there needs to be consistency of interpretation by the three Boards which will help build operators' confidence in the Canadian regulatory system as they make decisions to conduct work in any jurisdiction in Canada. Attracting contractors and installations to work in Canada has proven challenging due to the negative perception held by many relating to uncertainty in Canada of interpretation of regulations. The new regulations when drafted should facilitate a common approach to authorizations such that an offshore installation or other asset can experience an equal regulatory approach in any Board jurisdiction in Canada.

- 6. Future Guideline Development.** CAPP recommends that for improved efficiency the FORRI Steering Committee implement a plan for concurrent /parallel development of their guidelines (should they be deemed necessary), along with the Framework Regulation development process. Industry should also be involved in this process. Regulations can often be interpreted differently by both Operators and the Boards. As such, it is imperative that Board guidance be developed in close consultation with industry to reduce the potential for differing interpretation and to thereby improve the efficiency of implementation for both Operators and the Boards. This will also increase the predictability of the regulatory process, which will naturally enable a more efficient, timely, and consistent regulatory process. If the Boards' provide strict interpretation of the intent of a Regulation, this can (has) create conflicts with using international codes and standards which have been developed by independent agencies such as certifying authorities (CA's) or committees comprised of CA's, industry committees and independent agencies. This regulatory approach by the Boards has the potential to transfer liability to the Boards and Governments instead of having the liability rest with the operator.
- 7. Asset Life Extension.** There should be consideration to include an asset life extension application process in the Framework Regulation. Many of the producing fields in eastern Canada are aging and there will need to be a clearly defined regulatory process to extend their life so as to be able to make early and effective decisions to maximize recoverable resources.
- 8. Inclusion of Definitions.** Future policy intent documents should be issued with a set of definitions. This will help in our understanding of the intent and wording in various parts of the documents. The scope of applicability of the regulations can change significantly according to the breadth of the definition. For example the definition of "safety critical" will have significant implications for the scope of the management system, particularly in light of the interfaces with the Occupational Health and Safety Regulations that are currently under development concurrently with the Framework Regulation.

The time frames that the FORRI Steering Committee has set for reviewing documents, for meeting to discuss and for developing and providing commentary needs to be lengthened for the future phases. With the increasing technical complexity of the subject matter to be covered in Phases II and III, we request that the policy intent documents be issued at least four weeks prior to the stakeholder meetings to allow our members to engage the appropriate technical expertise within their organizations to provide a meaningful review and feedback at the stakeholder meetings. As well if the Phase II Document is issued in June, leading into the summer months, consideration needs to be given for sufficient time to not only review and meet to discuss but also to provide written comments.

Consideration should also be given within the Framework Regulation development process and its' technical working group for inclusion of technical experts from industry (e.g. Engineering Contractors) and/or certifying authorities as the inclusion of such would provide for additional technical depth with intimate and practical industry experience.

If you have any questions on this submission please let me know. We look forward to continued engagement with the FORRI Steering Committee and Project Team as they develop the Framework Regulations.

Sincerely,



R. Paul Barnes
Manager, Atlantic Canada and Arctic

cc. Fred Allen, FORRI Co-Chair, NL Department of Natural Resources
Kim Himmelman, FORRI Co-Chair, Nova Scotia Department of Energy

Attachments