

September 16, 2016

sent electronically – original to follow via regular mail

Kim Phillips
Senior Regulatory Officer
Offshore Petroleum Management Division
Natural Resources Canada
Atlantic Canada Energy Office
1801 Hollis Street, Suite 700
Halifax, NS B3J 3C8

Dear Ms. Phillips:

**Re: CAPP Comments on the Atlantic Offshore Occupational Health and Safety Initiative
Proposed Policy Intent for Phase 1 of the Atlantic OHS Regulations Dated July 13, 2016**

The Canadian Association of Petroleum Producers (CAPP) is pleased to have this opportunity to provide comments on the Proposed Policy Intent for Phase 1 of the Atlantic OHS Regulations dated July 13, 2016. CAPP members have been operating in the Atlantic offshore region for almost fifty years and are committed to the safe and responsible exploration, development and production of Canada's petroleum resources. Our comments, provided in this letter and in the attached table, are founded upon our collective experience in Canada and around the world.

The following topics are addressed in this letter:

- Background - OHS Regulation in the Offshore
- Performance Based Regulatory Approach
- Guiding Principles for Comments on Atlantic OHS Regulations
- Regulatory Overlap – Passenger Transport
- The Limitations of Prescriptive Regulation
- CAPP Submission on the Transitional OHS Regulations of December 2015
- Industry Recognized Standards
- Performance and Risk Based Maintenance and Inspection
- Terminology and Definitions
- Regulatory Renewal Timeline and Consultation Process
- Conclusion

Background - OHS Regulation in the Offshore

The Transitional OHS regulations came into force coincident with amendments to the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (the Accord Acts). Prior to the Transitional OHS Regulations Operators were required to comply with conditions appended to operating authorizations that prescribed detailed requirements for workplace occupational health and safety. Both the Transitional OHS Regulations and the previous regime include a number of provisions that were either outdated or designed for onshore oil and gas operations and thus not applicable to offshore facilities. This has led to the current initiative to develop offshore specific OHS regulations and an opportunity to implement a regime that meets current and future needs.

Performance Based Regulatory Approach

The Frontier and Offshore Regulatory Renewal Initiative (FORRI) has been developing Proposed Policy Intentions for a Framework Regulation under the Accord Acts. CAPP members have been actively participating in the consultation process for this regulation and we understand that the implementation date could be before or quite close to implementation of the Atlantic OHS Regulations.

It is anticipated that the Framework Regulation will apply to all offshore oil and gas exploration, development and production activities and it will be largely a performance based regulation to be accompanied by guidelines written by the offshore petroleum boards that describe a means to comply. This approach should result in fewer prescriptive requirements, allow for recognition of internationally accepted standards and recognize the Operator's safety management system as integral to safe operation.

Safety management systems are a requirement of the existing Drilling and Production Regulations and their effective implementation has contributed to a strong workplace safety culture and positive safety performance. This can be demonstrated by comparing metrics such as the recordable injury rate. Based on data published by the offshore petroleum boards, this rate for the offshore oil and gas industry is less than one-third of the provincial rates included in data published by the respective workers compensation agencies.

CAPP members are supportive of a performance based regulatory approach for the Atlantic OHS regulations for the following reasons:

- It is aligned with FORRI Framework Regulation approach;
- It is consistent with and allows for recognition of the safety management systems that are presently or will be necessary under the Framework Regulation in order to obtain and an activity authorization;
- It is consistent with other oil and gas jurisdictions and supports the efficient trans-boundary movement of drilling rigs and construction vessels;

- It recognizes that there will be changes in technology and standards and does not necessarily require revising regulations or developing deviation requests; and
- It reduces the potential for deviation requests which represent an administrative burden for operators and regulators.

Guiding Principles for Comments on Atlantic OHS Regulations

The CAPP submission on the Policy Intent Document for the FORRI Framework Regulation included a series of guiding principles that supported the comments. These guiding principles, which are equally applicable to the Policy Intent Document for OHS Regulations are listed below:

- **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 (practical) 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 and predictable compliance pathways;
- **Consistent**, with the overall objective of responsible development of Canada's frontier and offshore resources; and,
- **Fostering an internationally competitive oil and gas industry** that attracts capital investment.

Regulatory Overlap – Passenger Transport

The 2014 OHS amendments to the Accord Acts introduced the concept of regulations under Part III.1 being applicable to passengers in transit to or from offshore installations. Transport Canada has regulations that also apply to safety of helicopter and marine transport. This overlap has led to uncertainty over which regulations apply for vessel and helicopter owners, contracting parties, crew and passengers. CAPP is seeking clarity and certainty regarding this area of overlap which is critical to the safety of offshore oil and gas activities.

The Limitations of Prescriptive Regulation

As stated in our Transitional OHS Regulation and FORRI Phase 1 and 2 submissions, prescriptive language can create barriers to the timely development and operation of projects. Dated and

prescriptive regulatory requirements that do not reflect the international and progressive nature of the offshore oil and gas industry continue to present a challenge to Atlantic offshore operations.

To overcome this, industry makes use of the 'Regulatory Query' approach to request a deviation or exemption to specific requirements. This approach involves significant resources for both the industry and the regulators. Over the past three years almost 400 deviation or exemption requests were submitted to the C-NLOPB alone. The majority of these originated with short term non-Canadian flagged construction type or seismic vessels and were related to the Transitional OHS Regulations. The large number of requests is an indication that the Transitional OHS Regulations do not reflect the international nature of the offshore oil and gas industry and the codes and standards that apply to the industry.

The C-NLOPB have stated in their approval of some of these deviation or exemption requests that, in spite of the provisions in the Accord Acts *"For greater certainty, exemptions from part 111.1 Regulations made pursuant to the Accord Acts will no longer be granted after December 31, 2019."* This statement, while concerning to industry and problematic for future offshore oil and gas activities, highlights the need to minimize the prescriptive content of the OHS Regulations.

A performance based international regulatory perspective is required to support the development of the OHS Regulation. This permits industry to utilize the internationally based resources and infrastructure, which are unique and technically complex in their function.

The regulatory query process typically contemplates internationally recognized standards and guidelines to demonstrate equivalency to prescribed regulations and standards, further emphasizing the fact that these international standards should be accepted through the performance based approach. This has been outlined in previous CAPP submissions pertaining to the Transitional OHS Regulations.

Where it becomes necessary for international vessels and installations conducting short term or seasonal operations to adopt Canadian or North American requirements the impact of this requirement extends beyond the substitution of equipment. There is also a competency matter when equipment is substituted or standards are changed as personnel have to be re-trained and competencies are then impacted. In addition, developed and implemented inspection, maintenance and management systems are impacted as well. Thus the net affect of forcing adherence to a Canadian or North American standard may not result in safer systems of work when considered in totality.

CAPP Submission on the Transitional OHS Regulations of December 2015

CAPP encourages the OHS Steering Committee to revisit our December, 2015 submission that examined in detail the requirements for marine vessels and installations and proposed amendments to better reflect internationally recognized marine regulations and standards. To date, we have not had an opportunity to review with the OHS Steering Committee or the Technical Working Group the potential changes to the Transitional OHS Regulations. The submission highlighted that we could continue to have “transitional” regulations that require a “Marine Installation” to meet different standards than a “Marine Vessel” which does not seem logical in many instances. For example, requiring a “Marine Installation”, whether it is mobile or not, to meet a different standard for lifejackets, immersion suits, etc. does not seem to be a reasonable approach as the expected performance standard for such equipment should be the same whether installed on a “Marine Installation” or a “Marine Vessel”.

CAPP has proposed the inclusion of the phrase “as amended from time to time clause” when referencing some of the proposed revisions and additions. This phrase provides the flexibility necessary to ensure the recent and applicable standards are utilized.

Industry Recognized Standards

Section 201.13(1) "Operators code of practice" under the *Atlantic Accord* makes provision for an Operator under the direction of the chief safety officer to establish a code of practice in respect of occupational health and safety, or to adopt a code of practice in respect of occupational health and safety that is specified by the chief safety officer.

CAPP encourages that industry and the Boards jointly develop, publish and regularly update guidelines or standard practices for the provisions of the OHS Regulations. This collaborative approach involving the Workforce, Boards, industry, technical and service providers has been applied in Atlantic Canada with success in the development of well accepted guidelines and standard practice documents. Industry engagement during the guideline development process is essential to ensure that the entire regulatory renewal initiative will result in the most advanced and effective regime for stewarding Atlantic Canada's offshore oil and gas industry.

Other international jurisdictions such as the United Kingdom, maintain guidelines for their core oil and gas regulations and these guidelines frequently reference industry developed standards or other acceptable standards providing flexibility in the application of the regulations. Thus, by allowing flexibility, industry can take a more responsive approach to choosing the best methods or equipment available at the time, i.e. incorporating new technologies, techniques or work practices more rapidly. Subsequently, it is necessary that regulation and supporting guidelines contain minimal prescriptive

technical requirements. As stated previously, it is imperative that longstanding regulation such as the OHS Regulation and its supporting guidance be written to permit regulatory bodies and industry to readily adapt to change. CAPP has assembled a team that has been working with the Canada Newfoundland and Labrador (C-NLOPB) to develop a *Code of Practice for Transportation of Employees by Vessel to or from a Workplace in the Offshore Petroleum Industry - Newfoundland and Labrador* which will serve as a model for providing future guidance.

Performance and Risk Based Maintenance and Inspection

The policy intent document outlines prescriptive requirements for equipment maintenance and inspection and frequently limits equipment inspections and maintenance to the requirements as prescribed by the equipment manufacturer.

Industry's maintenance and inspection approach for equipment is based on good oilfield practice which necessitate the inclusion of operations experience, safety and risk criteria as well original equipment manufacturer (OEM) specifications. Industry has advanced from simply adhering to strict prescriptive maintenance plans and has adopted the use of risk based principles for inspection and maintenance of all equipment and specifically safety critical equipment. For example, the use of risk based principles has been approved by regulator for their application to the inspection of pressure vessels. Operators ensure OEM requirements are considered in the development of operational procedures and inspection and maintenance plans.

Although it may seem reasonable to state in policy intent that inspections and maintenance must be in line with the OEM's instructions it should be recognized that OEM's instructions are typically conservative. They also often apply to the use of tools by untrained personnel versus competent trades persons. Additionally, manufacturers requirements may not contemplate the jurisdictional requirements under which the equipment is operated thus these requirements may be influenced primarily by jurisdictional requirements where the equipment was manufactured.

Management systems are common practice in industry and form the basis for providing assurance that equipment is maintained, inspected and operated as intended. These systems are subject to audited and are assessed by regulators and other third parties such as Certifying Authorities or Classification Societies.

Specifying the frequency of inspection in policy text does not necessarily lead to a higher quality state for equipment and facilities. CAPP proposes that policy intent state the desired outcome that stems from sound maintenance and inspection philosophy. Thus the frequency of the inspection and maintenance campaigns may be adjusted accordingly to meet the desired outcome. As such, the

prescriptive requirement to inspect facilities and equipment "annually, or more frequently..." is not considered good oilfield practice.

CAPP's attached detailed comments and previous submissions identify those sections of the Document in which consideration of performance based policy text pertaining to equipment maintenance and inspection should be incorporated into regulation.

Terminology and Definitions

Lack of definitions for key terminology in policy intent documents limits the effectiveness of the review process. Similar concerns were raised by CAPP in our FORRI submission on the Framework Regulation and we were advised that for review purposes we should apply the definitions in the current regulations in their interpretation of the policy intent.

Not having the seen the proposed amendments to the Transitional OSH Regulations during the review of the Policy Intent Document seems out of step and has caused some uncertainty in the review process as it remains unclear as to whether previous comments have been incorporated.

CAPP encourages the OHS Steering Committee to ensure definitions are issued for review and interpretation prior to the development of draft regulatory language and guidance that may be based on an interpretation of terminology that differs from that applied in the review and comment process.

Regulatory Renewal Timeline and Consultation Process

The successful development of modern performance based regulation requires thorough consultation and review by all stakeholders as well as a reasonable timeline to ensure a successful outcome. In this context, CAPP has some apprehension regarding the regulatory renewal timeline and consultation process specifically pertaining to OHS Regulations.

Given that the OHS Regulation is anticipated to be in place for an extended period of time, the concurrent approach which consists of the development of policy intent documents; drafting regulatory language; and, eventual development of supporting guidance limits engagement by Industry for constructive review and input for each of these components and may not be conducive to the successful achievement of the project objectives.

CAPP strongly supports these regulatory renewal initiatives. However, given that development of the Atlantic Offshore OHS Regulation Initiative is now coinciding with the Framework Regulations it is imperative that the two working groups collaborate and share information to insure harmonization and consistency between the two regulations.

Furthermore, with the understanding that additional regulatory renewal initiatives are pending (for example Canadian Environmental Assessment Act and Air Emission Initiatives) CAPP would like to

highlight the need for effective planning in the engagement of stakeholders to ensure achievement of all regulatory renewal objectives.

Conclusion

The changes proposed by NRCan to amend the Transitional OHS Regulations in December 2015 was a very positive approach and will serve to moderate some of the compliance difficulties encountered by construction and seismic vessels prior to final OHS regulations in 2019. However, we are concerned that the feedback provided to the OHS Steering Committee proposing amendments to the Transitional OHS Regulations has not been fully considered as there has been no feedback provided indicating whether our comments have been reviewed and considered for incorporation in the final OHS Regulations.

We encourage the OHS Steering Committee to consider meeting with industry regarding the Transitional OHS Regulations prior to Gazette I later this year.

CAPP also encourages the OHS Initiative Steering Committee to embrace this opportunity to review and revise existing regulations and to invite industry to the table similar to the FORRI process. The FORRI meeting's with industry have been productive and is a model that should be applied to the OHS review process.

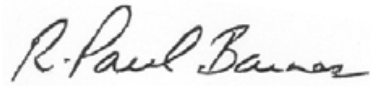
As stated in our previous OHS and FORRI submissions the time frames that have been established for reviewing documents; meeting to discuss; and, developing and providing commentary need to be lengthened for future phases and industry experts should be engaged by the OHS Technical Committee at critical junctures to fully explore how draft language could be applied. With the expected technical complexity of the subject matter to be covered in both FORRI Phase 3 in conjunction with Atlantic OHS Regulatory Initiative, 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. We also request that the issuance of policy intent documents and deadlines for submission of comments be sufficiently staggered or separated to permit full and thorough stakeholder engagement and contribution.

Consideration should also be given within the OHS 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 experts would provide additional technical depth from practical industry experience.

We look forward to continued engagement with Natural Resources Canada, the Provinces of Newfoundland and Labrador and Nova Scotia and members of the Project Team as they develop the Occupational Health and Safety Regulations.

If you have any questions please do not hesitate to contact me at 709 724-4200.

Sincerely,

A handwritten signature in black ink that reads "R. Paul Barnes". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

R. Paul Barnes
Manager, Atlantic Canada and Arctic

Attachments