

NOPSA

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Mr David Borthwick AO PSM
Commissioner
Montara Commission of Inquiry
GPO Box 890
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Attention: Andrew Berger
Solicitor Assisting the Inquiry

Dear Commissioner Borthwick

re: Montara Inquiry draft findings –

- 1. Performance of PTTEP**
- 2. Arresting the Blowout**
- 3. The Regulatory Regime: Well Integrity & Safety**

Thank you for the opportunity to comment on the above parts and findings of the Inquiry's Draft Report on the Montara Uncontrolled Release of Hydrocarbons.

1. Performance of PTTEP

We have no comments on the parts and findings in respect of the Performance of PTTEP.

2. Arresting the Blowout - PTTEP's Engagement with NOPSA

In relation to the Inquiry's draft finding (1.45) relating to surface capping of the H1 well, I can confirm that NOPSA was not provided with any submission from PTTEP that included or addressed a risk assessment, conducted by ALERT or by any other party for such an operation. The Inquiry's purpose in making this finding is unclear unless it is used to suggest a shortcoming by either PTTEP or NOPSA in not pursuing this option further.

This draft finding follows the Inquiry's statement of the advice (1.41) given to the Inquiry by Elmer P Danenberger that ALERT should have been given "*special consideration in any assessment of risks*". The Inquiry advised that it has seen evidence that ALERT claimed to be "*more than confident in achieving a successful outcome*" in respect of surface capping operations "*by applying modern risk management principles*" (142). Presumably, therefore, PTTEP was in a position to describe to NOPSA how the option could have been conducted safely, but PTTEP did not do so. This is not surprising since PTTEP, with the benefit of the ALERT assessment, still considered the risk of fatality to be at 25 to 30%. (1.38.1) I also note that ALERT has not provided any further information to the Inquiry on this matter.

The Inquiry's draft finding that "*there was little in the way of consultation between PTTEP and NOPSA in relation to the surface capping option, in particular in relation to ALERT's involvement in assessing the risks involved*" could be interpreted as suggesting that NOPSA should have consulted with PTTEP with a view to helping PTTEP come to a more optimistic view on the assessment of the risk of fatality. I suggest it is not the Inquiry's intention to leave the reader with this view and that it is difficult to envisage a circumstance where NOPSA could reasonably be expected to consider this level of risk of fatality as acceptable.

Specifically, no written submission was made by PTTEP to NOPSA in relation to "surface capping" of the H1 well.

In the same vein, the Inquiry expressed it has "*some concerns in relation to the apparent lack of collaboration between PTTEP and NOPSA insofar as considering all available well control options was concerned*". These concerns suggest a better well control option was potentially overlooked, whereas, in fact, the broader industry, evidenced by a public statement from the Australian Petroleum Production & Exploration Association dated 27 October 2009, concluded that the selected approach was "*the safest and most effective way of containing this serious incident*".

Further, the Inquiry's draft finding (1.51) appears to pre-empt the subsequent recommendation for the future (1.52) rather than being based on NOPSA's current functions. NOPSA's current functions do not provide for collaborative decisionmaking of any sort with an operator, nor any means to direct an operator to follow any particular course of action. Within this framework, criticism of a "*reluctance*" to engage the operator is unfounded.

NOPSA's enforcement role generally, and its ongoing investigation of the incident to determine if OHS laws had been broken, would make the concept of collaboration between operator and regulator in these circumstances challenging if not impracticable.

Similarly, there appears to be little basis for the Inquiry to note (1.91) that "*NOPSA nevertheless applied its policy of safety case assessment with limited flexibility to PTTEP's water deluge submission*". PTTEP's submissions in this respect were clearly and self-evidently not assessed under NOPSA's safety case assessment policy since, as acknowledged by the Inquiry, these submissions were not safety cases. Further, PTTEP's submissions on this matter were materially deficient and technically flawed (see my previous letter to the Inquiry dated 20 April 2010). Therefore, contrary to the Inquiry's finding (1.86), NOPSA considers that it did provide expeditious assessment of PTTEP's submissions in every respect. In fact, the submissions were flawed and lacked rigour.

NOPSA, contrary to the assertion made in the opening sentence of paragraph 1.83, provided detailed analysis regarding these deficiencies to PTTEP and offered unlimited opportunity to rectify and re-submit the proposal as well as multiple opportunities for discussion. I note that in this matter the Inquiry's findings in relation to PTTEP (6.9d & f) are relevant.

3. The Regulatory Regime: Well Integrity & Safety

I now make some comments generally in respect of the Inquiry's draft view as to the desirability of the regulator adopting a collaborative role with operators. The Inquiry (126) considers that compliance monitoring should include attending hazard identification study meetings, hazop meetings, and other operator/titleholder internal meetings.

NOPSA is of the view that such arrangements would:

1. Create a real risk of regulatory capture, compromising the regulator's permissioning and enforcement functions. In particular it is self evident that participation by the regulator in the development of operators' proposals precludes objective independent assessment of those same proposals by that regulator.
2. Act to dilute one of the fundamental tenets of the offshore OHS regulatory regime which is "*those who create risks from work activity are responsible for protecting workers and the public from the consequences*"¹ of hazards arising from that activity.
3. Consume limited regulatory resources.

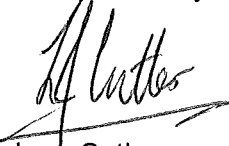
¹ 'Reducing Risks, Protecting People' - UK HSE 2001

I might also note that early engagement does occur in some regimes, but with a clear regulatory framework, e.g. the UK HSE design notification process.

I note the Inquiry's comments (62) on the NT DoR performance and in particular the concern about "*developing too close a relationship with the operators being regulated*". Later, the Inquiry expresses a view that "*the relationship between NT DoR and PTTEP had become far too comfortable*" (129). These factors combined with the potential for a cost-focused or mendacious operator (c.f. Inquiry report on Performance of PTTEP) mean that a collaborative relationship is likely to become corrupt. I also note that a significant concern arising from the Deepwater Horizon blowout is that encapsulated by the President of the USA's criticism of the collaborative "*cosy relationship*" that its regulator, the Minerals Management Service (MMS), had with industry and which it can be inferred may have played a part in the incident.

Lastly, I will comment on the Inquiry's draft recommendation "*that the NOPRA and NOPSAs roles be combined*" (158). The Inquiry warns that "*splitting regulatory responsibility between a NOPRA and NOPSAs risks divergent approaches and confusion*". The Inquiry adopts this position despite opposite views expressed in the Productivity Commission report and the Bills/Agostini report. Indeed, the modern prevailing approach to safety regulation is to separate the regulation of resource management (i.e. industry promotion and titles management) from safety. Specifically, following the Piper Alpha tragedy, the UK safety regulatory responsibilities were so separated. In 2004 in Norway, the Petroleum Safety Authority was similarly separated from the National Petroleum Directorate. The US administration is now actively contemplating such a separation with respect to the MMS following concerns regarding "*real or perceived conflicts of interest*" as a result of the Deepwater Horizon blowout.

Yours sincerely



Jane Cutler
Chief Executive Officer

24 May 2010