

24 July 2013



Mr Stephen Hamilton
Principal Planning Officer
Strategic Planning Division
Millennium House
17-25 Great Victoria Street
Belfast BT2 7BN

Dear Mr Hamilton

E/2013/0093/F

Temporary works of drilling exploratory borehole to approx 2700m depth to investigate underground strata for hydrocarbon exploration under DETI license PL3/10 issued to Rathlin Energy Ltd. Also to temporarily widen road into verge along 60m of Kilmahamogue Road to facilitate safe access. Also car parking, portacabin offices/welfare/workshops and 180m of 4m high perimeter earth bunds within temporary works site.

Friends of the Earth Northern Ireland have many concerns with this planning application. We believe the application should be rejected on economic, social and environmental grounds, an EIA is required and there is misleading and insufficient information to determine the application.

We have profound concerns about the impact of petroleum extraction on climate change, and the adequacy of the current regulatory regime to mitigate risks to the local environment.

The following issues are of particular concern:

1. The consequences of materially significant information being absent have not been addressed

In a letter from the Planning authority on 18th July 2013 to Rathlin Energy it is acknowledged that significant information must be submitted by the applicant to enable the application to be determined. A response date from the applicant has been suggested for 9th August 2013 long after the response date for representations.

We are of the opinion that the public has not had reasonable opportunity, by way of time or information, to consider the nature of this application especially given the scale and depth of the outstanding matters to be submitted. The implications are that (a) the application will require to be re-advertised (b) a further EIA determination (if one was ever carried out) will require to be undertaken before the application can be proceed (c) the process appears to be inconsistent with the obligations under the Aarhus Convention - United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 2001 (d) information on the P1 form is currently misleading.

For example, the applicant acknowledges that hazardous substances will be used but these have not yet been identified to inform either the EIA determination process or the public.

The Department also accepts that certain details (drawing number IBM0397-PL-01) in the site layout plan are not legible. It is simply not possible to have validated this application or give adequate information to the public or enable a proper EIA determination when potentially significant information has been omitted. Similarly, an operational plan has not yet been submitted (detailing how the site will be operated), there is no information on what material may be leaving the site, or information on how the site will be restored. These substantive omissions need to be dealt with at pre public consultation stage.

2. The EIA regulations have not been complied with

We have been unable to establish from 'Public Access' if an EIA determination has been carried out, and if it has, whether this determination adequately complies with European law - EIA Directive as transposed by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012.

Nor have we been able to establish if this determination has been lodged on the EIA register. Friends of the Earth Northern Ireland considers this latter point to be clearly unlawful. It is our understanding that EIA determinations must be posted on Public Access and that any failure to do so is contrary to normal Departmental practice. It is clear from the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012, Schedule 2.2(d) that an EIA screening is necessary as the site is in excess of 1 hectare and does not fall within "the exception of drillings for investigating the stability of the soil." To require the public to comment on this application without providing it with the EIA Screening carried out by the Department is unacceptable and disadvantageous to those wishing to object. In addition, Friends of the Earth does not accept the unsubstantiated claim by the applicant that "this exploration phase is not EIA Development according to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 and an Environmental Impact Assessment is not required." (Unsurprisingly, we note that the applicant has not considered that an EIA is necessary. The applicant has also avoided a £10,000 fee and enhanced advertising and consultation requirements.)

For the benefit of the public and the Department, the applicant should be required to set out exactly how, according to the EIA Regulations 2012, an EIA is not required, when they have subsequently felt the need to provide supporting environmental information. The Department should also make clear whether it considers this accompanying environmental information to represent the submission of a voluntary environmental statement as the additional information requested in your letter dated 18 July 2013 fails to mention the EIA Regulations despite the fact that much of the detail required is very clearly environmental information normally required as part of the EIA process. We are asking for a written answer to this specific point.

The absence of material and significant information as outlined above has clear implications for any EIA determination. For example, the use of hazardous substances must be a factor in the accurate determination of whether an EIA is required and what consequent implications for human health and the environment may arise. Is it not reasonable to presume that other competent authorities with expertise in environmental matters pertaining to hydrocarbon exploration and use/storage of hazardous substances ought to have been consulted and informed of the EIA determination process? Regulation 10 of the EIA Regulations 2012, and the Department's guidance on Environmental Impact Assessment, make it clear that the Department should make available to the public the outcome of any such pre EIA screening consultations.

The Department in its letter to the applicant of 18th July 2013 has confirmed that these substances have not been identified. How can an EIA determination be valid and lawful when this information is not yet available?

The applicant has submitted what is effectively a 'poor cousin' EIA which attempts to avoid public scrutiny and legal redress. The Department must be aware of the legal implications of accepting this approach.

Gas flaring; the liberation of potentially dangerous and naturally occurring chemicals, heavy metals and radioactive isotopes; the disposal of waste water; contamination of water table; proximity to human habitation; livestock impacts; and hydraulic connections are just some of the issues that must be properly addressed in a legally constituted EIA.

The Department should be aware of the EC opinion to all members states (Guidance note on the application of Directive 85/337/EEC to projects related to the exploration and exploitation of unconventional hydrocarbon) and in particular, section three, bullet point three, states "Hence, unconventional hydrocarbon projects, even exploratory ones, which use deep drillings, are covered by Annex II.2.d.". Whilst this is not necessarily an application for exploratory hydraulic fracturing, this application must be considered and assessed as part of a consenting framework for hydraulic fracturing should commercial volumes of gas become available and should therefore be covered by this EC opinion.

The Department must also be aware of this recent directive:

"The Environmental Impact Assessment Directive will play a central role and is non-negotiable in the decision making process as it will ensure that the environmental implications of this project are taken into account before final decisions are taken and it will involve the public in the decision making process, making it more transparent." Department of the Environment- High-volume Hydraulic Fracturing
Published at 6.00 pm on Tuesday 16 July 2013

Moreover, the applicant has admitted that they will be applying for further deep exploration wells and there is exploration site subject to an earlier planning application. The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 governing cumulative impact and the Baker judgment would suggest that the EIA must take into account similar applications and assess them cumulatively. It is unacceptable that submission of applications on a piecemeal basis is permitted to avoid the submission of an EIA and the requirement to assess the cumulative effects, particularly as the applicant is confirming that other applications are to be submitted.

3. Other permits/procedures are needed and require to be considered at this stage

The Environment Agency has announced that a hydrocarbon company has to apply for a mining waste permit and a radioactive substances permit for their test drilling in Sussex. Similar permits to these must be requested and assessed as part of this planning application. We also consider that water permits are required.

The lack of a Strategic Environmental Assessment for petroleum licences has raised many doubts and issues. The absence of an SEA that would have frontloaded consideration of environmental concerns, further reinforces the need for robust applications of these licences and permits.

The applicant has admitted that this application is for hydrocarbon exploration. They have accepted it is for deep exploration and testing. Despite these facts, there is a paucity of information and explanation yet we know that, given the broad reach of the petroleum licences, that this may include exploring 'fracking' or techniques for more conventional oil and gas extraction. The applicant's covering letter is ambiguous in this regard by not clearly outlining the potential opportunities for them that may emerge from their application.

4. Prematurity

The application is premature until a Strategic Environmental Assessment is carried out on hydrocarbon licensing and until the policy framework for this activity (including up to date policies and a local planning framework) is in place. A coherent planning framework for these new petroleum technologies is required which, inter alia, should include:

- Specific planning policies on conventional and unconventional oil and gas exploration which include assessments in relation to sustainable development, economic disadvantages/advantages and climate change
- the precautionary principle
- an up to date local plan
- the Environment Agency is currently undertaking a risk evaluation to assess the adequacy of the current regulatory regime. We believe that given the concerns of regulation in Northern Ireland expressed by the Ombudsman, the Criminal Justice Inspectorate, academics in the School of Law at Queens University and others that a similar risk evaluation should be carried out here
- A specialized unit must be established within the planning authority. There is plenty of evidence to suggest the Minerals Unit is ill equipped in its understanding of environmental law and governance and we question whether it has the capacity to deal with these applications

Moreover, given Minister Attwood's concerns over how Strategic Planning Division has been applying the EIA Regulations to mineral extraction and waste applications and has ordered an urgent review of all current and recently approved cases in light of the Cavanacaw judicial review and other failings, there is little public confidence in the Department's ability to deal with this application in line with the requirements of the EIA Directive. Until this review is completed and the findings opened to public scrutiny, there is serious public concern that the Department does not have the capability to properly assess the environmental effects of this application, particularly as no EIA screening appears to have been undertaken and additional environmental information is being requested outside of the EIA process.

5. Misleading use of the Planning (General Development) Order 1993

The applicant's reference to the Planning (General Development) Order 1993 (GDO) in their letter of 14 June 2013 is irrelevant and an attempt to down play the significance of this proposal. The GDO is very clear in that exploratory drilling may only be considered permitted development where the operation does not exceed a period of 4 months (Part 16A). This operation is scheduled to run for 11 months and therefore it is not permitted development and always would have required a planning application. Furthermore, conditional of any permitted development is the requirement that "no trees on the land shall be removed, lopped, topped and no other thing shall be done on the land likely to harm or damage any trees" (Part 16A.2(b)). It is simply not clear from the scant level of detail submitted if trees are to be removed from the site or as a result of proposed road widening.

6. A climate assessment is necessary

In the absence of an SEA an EIA must consider the climate impact of petroleum licence applications. For example, the climate impact of shale gas is currently poorly understood due to a lack of reliable data, but most evidence suggests that the overall climate impact of shale gas extraction and use could be greater than that of conventional gas and as great as that of coal. Furthermore, the recent report from the International Energy Agency 'Golden Rules for the Golden Age of Gas' showed that exploiting the world's resources of unconventional gas would be incompatible with preventing dangerous levels of climate change, setting the world on course for a global temperature rise of 3.5°C.

A recent Royal Society and Royal Academy of Engineering report made it clear that "*decision making would benefit from research into the climate risks associated with both the extraction and use of shale*

gas". It is imperative that a climate impact assessment is carried out before any decisions are taken about further gas or oil exploration or production.

Finally, please note that a number of reasonable questions have been posed in this objection which require a response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Orr', written in a cursive style.

James Orr
Director (Northern Ireland)