DECOMMISSIONING ARRANGEMENTS FOR HYDRAULIC FRACTURING

The Committee's report HC 1742 'Public cost of decommissioning oil and gas infrastructure' recommended that we write to you to explain the decommissioning arrangements for hydraulic fracturing, including an explanation of the responsibility for subsequent costs once licences have been surrendered and what action the Government is taking to prevent liabilities falling to taxpayers. This letter sets out our response to that recommendation.

Under the conditions of their Petroleum Exploration and Development Licence (PEDL), licensees are responsible for the safe decommissioning of shale gas wells. Before awarding a licence, the Oil and Gas Authority (OGA) assesses whether a company has adequate financial viability and capacity to undertake the obligations of their licence. Before drilling commences and, where relevant at the production stage, the OGA undertakes further checks to ensure operators have insurance in place and the financial capacity to fulfil their licence commitments.

If a licensee is not already the landowner for a given site, permission is required from the relevant landowner for drilling to take place from their land. The lease of land to a licensee, including for shale gas extraction, is a commercial arrangement between the landowner and the licensees, and as part of their commercial agreement the landowner may have required that suitable financial security is made available for decommissioning of the well and restoration of the site at the end of its use.

Mineral Planning Authorities (MPAs) can request detailed site restoration and aftercare plans at the time of granting planning permission and have broad powers to impose conditions on the planning consent to mitigate the adverse effects of the development or use of the land. MPAs can also make orders requiring the removal of plant and machinery from the site, and the restoration and aftercare of the land, and can enforce such an order by entering the land, carrying out the required activity and recovering its expenses for doing so.
Hydraulic Fracturing Consent (HFC) will not be issued by the BEIS Secretary of State unless he is satisfied that it is appropriate to do so. As set out in the Written Ministerial Statement of 25 January 2018, the Government will assess the financial resilience of companies wishing to carry out hydraulic fracturing operations, including their ability to fund decommissioning costs, when deciding whether it is appropriate to grant HFC. As part of this, the Secretary of State may request companies to take appropriate steps to demonstrate their financial resilience before HFC can be granted, which could include demonstrating that adequate security arrangements are in place to cover decommissioning costs. The financial resilience requirement was introduced to provide additional protection to minimise the risk that decommissioning costs will not be met in the event of licensee insolvency.

At the end of a well’s useful life, the relevant regulators (including the OGA, Environment Agency, and Health & Safety Executive) must be satisfied that a well has been safely decommissioned. Before any licences, permissions or permits can be relinquished, the regulators and MPA must also be satisfied that the terms of the relevant permits, licences and legal duties have been met and/or complied with.

To date, there have only been two hydraulically fractured shale gas wells in the UK. The first, at Cuadrilla’s Preese Hall site in Lancashire, has been fully decommissioned and the land restored to its previous use. The second, Cuadrilla’s Preston New Road well-1z, is still operational; as part of the associated application for HFC, the Secretary of State asked the Infrastructure and Projects Authority to assess the financial resilience of the company, including its ability to fund decommissioning costs.

In the event of an operator going out of business, and the mitigating actions described above being unavailable – or in the unlikely event that there is a problem with the well, once it has been fully decommissioned and the licences returned – the Environment Agency has the ability to pursue the ex-licensees for the cost of the damages under the Environmental Liability Directive. The Directive is implemented in England through the Environmental Damage Regulations 2015 which define the term ‘environmental damage’ so as to only catch serious damage (to water, land or protected species/habitats). The operator of an activity which causes ‘environmental damage’ is liable to pay for the remediation of that damage. This would be to restore the environment to its pre-damaged state and to compensate for any ‘interim loss’ to the environment pending full recovery. It is also possible for landowners to be pursued for the cost of any environmental damage under the Environment Damage Regulations, if found liable, though this is relatively untested.

Yours faithfully,

Alex Chisholm

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