GREYMOUTH GAS

12 July 2012

Jacki Eves
Senior Legal Counsel
Gas Industry Company Limited
PO Box 10 646
Wellington 6143

Dear Jacki,

RE: Statement of Proposal – Amendments to the Gas Governance (Compliance) Regulations 2008

Greymouth Gas New Zealand Limited ("Greymouth Gas") is pleased to make a submission on the Statement of Proposal – Amendments to the Gas Governance (Compliance) Regulations 2008 (the "paper") following an invitation from the Gas Industry Company Limited ("GIC") on 31 May 2012.

Greymouth Gas generally supports the suggested changes in the paper including the concept (but not the implementation) of a threshold mechanism for the alleged breach process. It does appear prudent to streamline this concept to reduce the compliance burden of non-material alleged breaches. Given the quantum of non-material breaches in the industry to date and the potential dollar savings noted in the paper, this issue is material.

Prima facie, there are three main solutions here aside from the status quo:

1) Regulate for optional reporting, with guideline notes to guide parties who may choose to allege such breaches, or

2) Regulate for mandatory reporting, with the threshold mechanism wholly within the Gas Governance (Compliance) Regulations 2008 (the "Compliance Regulations"), or

3) Regulate for mandatory reporting, with threshold mechanism wholly within guideline notes.

As an aside, despite an obligation to seek to identify all reasonably practicable options in accordance with section 43N(1)(a) of the Gas Act 1992 (the "Act"), the paper has missed solution 2 above as being a reasonably practicable option worthy of exploration. Instead, the paper and the GIC appear to prefer solution 3, being a hybrid approach.

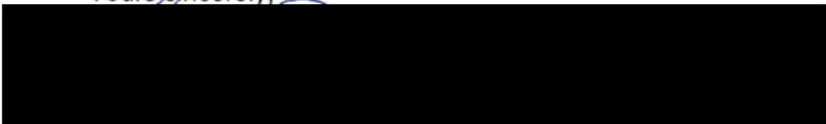Greymouth Gas does not support this hybrid approach because:

a) Guideline notes are not subject to the same legislative scrutiny and process as acts and regulations and have little legal standing.

b) If guidelines notes are explicitly referred to in empowering regulations:

   i. The guideline notes would become a de-facto extension of the empowering regulations, particularly as GIC has the ability to recommend amendments to regulations and to amend guideline notes, and

   ii. GIC's ability to amend guideline notes would not be formally subject to section 43L(1) of the Act, which specifies compliance with sub-parts (a) through (d), or to section 43O(1) of the Act being the process once the GIC has made a recommendation for regulations or amendments to the relevant Minister, and

   iii. Extrapolated into a critical contingency context, GIC could completely change the game at no notice, which undermines regulatory certainty. The same applies to alleged breaches, and

   iv. There is no legislative guarantee that GIC will consult on changes to guideline notes (e.g. just as GIC appears not to be consulting on the amount of the threshold quantities within the paper itself), and

   v. Any GIC materiality assessment of future changes to guideline note threshold quantities would be an internal GIC assessment, not formally backed by section 43N(3) of the Act; which is a lesser test pertaining to consultation than had the thresholds been in the Compliance Regulations.

In other words, GIC's preferred option would enable GIC to issue and amend guideline notes which, to a significant extent, would enable the GIC to freely alter the Compliance Regulations in the future of its own accord and thus circumvent the proper regulatory amendment processes set forth in the Act. In the paper and as a precedent, it is inappropriate for GIC to subvert the Act and delegate further authority to it than is set forth in the Act.

Greymouth Gas does support optional or mandatory reporting for alleged breaches; with or without a threshold mechanism (whichever combination is deemed superior).

However, Greymouth Gas challenges the proposal to give GIC guideline notes legal standing and considers such a proposal to be ultra vires of the Act and its intent, and against proper prudent legislative process.

Yours sincerely,

Chris Boxall
Commercial Manager