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Ms Michelle Baxter
Chief Executive Officer
Safe Work Australia
By email: [REDACTED]

Dear Michelle

I am writing to provide comments on Safe Work Australia's *Consultation Paper on the model Work Health and Safety Regulations relating to Major Hazard Facilities, October 2022*.

Overview of Major Hazard Facilities in NSW

SafeWork NSW is the regulator for Major Hazard Facilities in NSW. Major Hazard Facilities (MHF) include sites like oil refineries, chemical manufacturing plants, LPG facilities, processing plants and other sites that store, handle or process large quantities of hazardous chemicals. Any facility that has certain chemicals in excess of their threshold quantity is a major hazard facility.

Without proper controls chemical exposure can cause cancer, respiratory illnesses, skin and eye irritations, as well as fire and explosion related injuries. Exposure to chemicals is preventable. Chapter 9 of the model WHS Regulations provides a strong framework for the management of MHFs.

There are 37 MHFs in NSW, which are located across the state. SafeWork NSW continues its work to reduce the levels of exposure to hazardous chemicals at work through the safe use, storage and handling of chemicals. This is an essential part of creating a healthy, safe and productive workplace.

Observations by SafeWork NSW regarding MHF

The issues identified below are raised for consideration by Safe Work Australia, for possible enhancement of the current MHF framework within the model WHS Regulations.

Part 9.3 – Safety assessment (clause 555)

Clause 555(1) requires MHF operators to conduct a safety assessment in relation to the operation of the MHF. Clause 555(2)(e) requires operators to include in its safety assessment the control measures the operator decides to implement. It does not include the control measures the operator decides not to implement. Clause 555(4) specifies that the operator must document all aspects of the safety assessment, including the reasons for deciding which control measures to implement. Consideration could be given to strengthening clause 555(4)(b), to require MHF operators to document not only the reasons for deciding which control measures to implement, but the reasoning why others were not implemented.

There is a concern that the current drafting permits MHF operators to discount the likelihood of major incidents and major incident hazards without a transparent and logical basis in a safety assessment. In discounting the hazards, operators may implement inadequate safety controls. Regulators need to be satisfied that this is not occurring. This would ensure operators have a comprehensive identification of controls at the outset of the safety assessment.

Part 9.3 – Control of risk – (clause 556)

This clause requires the MHF operator to implement control measures that eliminate, so far as is reasonably practicable, the risk of a major incident occurring, or if it is not reasonably practicable to eliminate the risk, to minimise the risks. Consideration could be given to expanding the note in this clause to refer to not only section 20 of the WHS Act (Duty of PCBU's involving management or control of workplaces) but also sections 17 (Management of risks), 18 (What is 'reasonably practicable' in ensuring health and safety) and 19 (Primary duty of care). These sections read together would provide further context for the MHF operators.

Part 9.4 - Licensed MHF – risk management and Division 2 (clauses 569, 570 and 588)

The current Management of Change provisions require operators to provide notification of major changes (within 14 days), including changes to safety reviews and safety cases or a change to the quantity of the hazardous chemicals present or likely to be present at the facility. Consideration could be given to include, as part of the notification process, the safety implications of the major change/s and how they will be managed.

Part 9.4 - Information for local community – general (clause 572)

Major hazard facilities are required to lodge information with the local community, usually at the local library. This relies on members of the public knowing this and requesting further information. Consideration could be given to other more effective methods of ensuring that the local community surrounding a MHF are aware of the information specified in this clause. For example, on the local authority and/or WHS Regulator's website.

Part 9.7 - Licensing process – additional information (clause 579)

Clause 579 outlines the procedure for the regulator to request further information from the MHF operator, if there is not sufficient information to enable the regulator to make a decision to grant a licence. SafeWork NSW has found that many safety cases submitted by MHF operators lack sufficient detail, as they often omit important information, contain inconsistencies, and do not provide adequate information to demonstrate that all major incident hazards have been identified, and their risk minimised so far as is reasonably practicable. Where a safety case is lacking sufficient detail (where extensive detail has been omitted), it is not reasonable for the regulator to detail all the deficiencies or ask for numerous pieces of additional information in order to be able to assess the safety case. If the regulator has to keep asking for large amounts of additional information, the safety case is not up to date and accurate.

This can cause difficulties when assessing the additional information and ensuring the necessary corrections have been made. Consideration could be given to enabling the regulator to return the safety case to the MHF operator outlining the deficiencies, with a request for a compliant safety case by a certain date. This will assist with ensuring the regulator has an up to date and accurate safety case.

Part 9.7 – Licensing of MHF – Division 1 – Licensing Process

Clause 584 – Conditions of licence

On occasions facilities experience difficulties in fulfilling conditions placed on their licences by the date required, due to circumstances which are out of their control. There is no provision to allow an extension to the timeframe set to comply with the condition. This issue also occurs when granting licence renewals.

It would be beneficial if regulators had the power and flexibility to grant extensions to operators

when providing submissions for their major hazard facility licence conditions. That way the regulator can make an informed decision about the licence condition, rather than issuing a licence condition which may be unsuitable for both the operator and the regulator.

Schedule 15 – Hazardous chemicals at MHF (and their threshold quantity)

The definitions in this schedule all refer the reader to the definitions contained in the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code). Some stakeholders have expressed their confusion with this, and the double handling to find the relevant definition.

It is noted that the Victorian Occupational Health and Safety Regulation names additional chemicals, which are not included in Schedule 15. Consideration could be given to including these chemicals and providing a procedure on how to notify the regulator of the chemicals listed in Schedule 15. Operators have advised that there is no clear procedure on notification to regulators about Schedule 15. This would be of benefit to both MHF operators and the regulator.

Schedule 16 – Matters to be included in emergency plan for MHF

Consideration could be given to requiring MHF operators to report to the regulator, demonstrating how they have established controls to prevent major hazard incidents which may have occurred in Australia or overseas. This would enable MFH operators to demonstrate they are aware of major hazard incidents which have taken place elsewhere, and have control measures to prevent similar occurrences.

Schedule 17 – Additional matters to be included in safety management system

Clause 7 of this schedule outlines additional matters to be included in the safety management system of an MHF. SafeWork NSW has observed that MHFs can have difficulties following and complying with the performance monitoring requirements. Consideration could be given to providing further guidance.

Invitation to provide comments on SWA Guidance material on MHFs

SafeWork NSW is of the view that it is premature to provide comments on the MHF guidance material until the outcome of this consultation on the regulations is complete. It would be more appropriate to review the guidance material once any model WHS regulation amendments have been agreed to (if any).

I have no objections to this letter being published, if required, as part of this consultation process.

Yours sincerely



Natasha Mann
Deputy Secretary – Better Regulation Division

Head of SafeWork NSW

02/11/22