

PUBLIC COMMENT

Consultation on the model Work Health and Safety Regulations relating to Major Hazard Facilities

Instructions

To complete this online submission:

- Download and save this submission document to your computer.
- Use the saved version to enter your responses under each question below. These questions are from the [Consultation Paper on the model Work Health and Safety Regulations relating to Major Hazard Facilities \(MHFs\)](#).
- Once you have completed your submission, save it and upload it using the upload your submission link on the [Engage submission form](#).
- You can also upload any other documents needed to support your submission to the [Engage submission form](#).

Submissions will be accepted until **11:59 pm (AEDT) on Thursday 3 November 2022**.

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- submission published
- submission published anonymously
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For further information on the publication of submissions on Engage, please refer to the [Safe Work Australia Privacy Policy](#) and the [Engagement HQ privacy policy](#).

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- submissions containing defamatory material, and

- submissions containing views or information identifying parties involved in hearings or inquests which are currently in progress.

Your details and background

(Please leave blank if you wish to remain anonymous)

1. Name or organisation

████████████████████

2. Email used to log into Engage

████████████████████

Questionnaire

(Consultation document questions)

Your response should identify the specific regulation/s involved and, where possible, provide evidence to support your statement.

Evidence demonstrating issues raised in the Review (Section 4.1)

4.1a) What evidence do you have of inconsistencies in the application of the model WHS Regulations relating to MHFs across jurisdictions?

Other Jurisdictions have enacted legislation that precludes the need for explosive storage sites to be MHF licenced and hence avoids the unnecessary need for over-regulation of explosive operators:

i. QLD WHS Regulations

530

This chapter does not apply to particular facilities

(1) This chapter does not apply in relation to a facility regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth).

(2) This chapter does not apply in relation to a facility that is a magazine under the Explosives Act 1999 at which no processing activity involving dangerous goods, including explosives, is carried out.

ii. Western Australia Dangerous goods (Major Hazard Facility) Regulation

5. Major hazard facility, meaning of

A place is a major hazard facility for the purposes of these regulations if —

(a) the operator of the place has been given a notice under regulation 21(1) of the Chief Officer's decision to classify the place as a major hazard facility

21. Chief Officer to notify decision on whether or not to classify a place as a major hazard facility

(1) On deciding whether or not to classify a place as a major hazard facility for the purposes of these regulations, the Chief Officer must give the operator of the place written notice of the Chief Officer's decision.

iii. [REDACTED] Proposal

It is proposed that NSW WHS regulation be changed in a view to harmonising with other explosive regulator jurisdictions and consider more flexibility in its determination of MHF facilities involving explosive products

Example:

530 This Chapter does not apply to certain facilities

(1) This Chapter does not apply in relation to a facility that is regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 of the Commonwealth.

(2) This Chapter does not apply in relation to—

(a) a port operational area under the control of a port authority, or

(b) a pipeline to which the Gas Supply Act 1996 or the Pipelines Act 1967 applies, or

(c) a mine or a petroleum site.

(d) an explosive storage magazine under the Explosives Regulation 2013. or

i. An explosive storage magazine under the Explosives Regulation 2013 with an on-site process facility that can demonstrate the process facility and storage facility complies with the prescribed separation distances in accordance with AS2187.1.

e) Unless the operator of the place has been given a notice under regulation xxx of the Chief Officer's decision to classify the place as a major hazard facility.

Explosive sites that are not determined as MHF would continue to operate under the current explosive regulations. Therefore, there would be no detrimental impact on safety.

4.1b) What are the issues around duplication for businesses with MHFs, particularly those that fall under multiple jurisdictions?

Double-handling information within management plans

As part of the explosive licence application the applicant must provide a:

- Security Plan and
- Safety Management Plan

Generally, the plans can be amalgamated into a comprehensive Explosive Management Plan (ExMP).

The ExMP, which is a thorough document communicates all the necessary factors and Risk Assessments for the safe operation of the facility/site. Many if not all of the factors in an ExMP are duplicated in the required MHF Safety Case.

c) It is the view of [REDACTED] that in some cases current NSW legislation regarding explosive facilities are over-regulated when encompassed with MHF legislation.

This overregulation subjects a company to the unnecessary costs associated with licence fees and the burden of maintaining multiple duplicated documents.

Duplication of documents is not only time-consuming to manage, but also difficult to keep track of changes from one plan to the next. therefore, a safety risk.

4.1c) What concerns do you have with expectations of what should be included in a safety case?

Valid issues have been raised during this submission>

My concern is that the comments will be overlooked or ignored.

Unlike highly sophisticated chemical processing facilities, explosive storage sites are generally

uncomplicated, rudimentary production and storage facilities that have suitable on-site separation in accordance with AS 2187.1, table 3.2.3.2. Moreover, Explosive sites are highly regulated and monitored under state-specific laws i.e. NSW Explosive Regulations 2013. Furthermore, explosive storage/production facilities are often located in remote regions away from populated areas, therefore, offering little or no risk to off-site facilities and local communities, and where not located remotely, are appropriately licenced.

Current regulations generally require explosive sites/facilities to acquire a multitude of licensing ranging from manufacturing, transportation and import/export. Additionally, if the site has been determined as an MHF for exceeding threshold quantities of the schedule 15 chemicals the facility is required to attain an MHF Licence.

The costs to businesses associated with licencing are not merely financial but also time taken due to the preparation of the required documentation. a) For example, the cost associated with an explosive storage/processing site that has been determined as an MHF:

- MHF \$55,386.00 per annum
- Manufacturing \$2909 per 5 years
- Import/Export \$2735 Per 5 years

Over five years, an MHF licence will cost an explosive operator \$276,930. The explosive operator will still be required to maintain their explosive licencing with a combined cost of a Manufacturing, Import and Export licence of \$5644, adding the cost of an MHF and explosive licencing over five years totals \$282,574.

Therefore, a company could be charged an additional licence fee of \$276,930 over 5 – years. The site could be assessed as posing no risk to a local community and not being determined as an MHF, and a site that can be safely operated under existing explosive legislation costing \$5644?

4.1d) What duplication or overlap is there between the MHF Regulations and other legislation?

Double-handling information within management plans

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c) It is the view of [REDACTED] that in some cases current NSW legislation regarding explosive facilities are over-regulated when encompassed with MHF legislation.

This overregulation subjects a company to the unnecessary costs associated with licence fees and the burden of maintaining multiple duplicated documents.

Duplication of documents is not only time-consuming to manage, but also difficult to keep track of changes from one plan to the next. therefore, a safety risk.

4.1e) What do you consider contributes to regulatory complexity for MHFs?

Unlike highly sophisticated chemical processing facilities, explosive storage sites are generally uncomplicated, rudimentary production and storage facilities that have suitable on-site

separation in accordance with AS 2187.1, table 3.2.3.2. Moreover, Explosive sites are highly regulated and monitored under state-specific laws i.e. NSW Explosive Regulations 2013. Furthermore, explosive storage/production facilities are often located in remote regions away from populated areas, therefore, offering little or no risk to off-site facilities and local communities, and where not located remotely, are appropriately licenced. Therefore, explosive sites are embroiled in the unnecessary structure of MHF oversight. as previously stated, potential explosives site applications are assessed by explosive regulators and licenced through the state explosive laws.

This company has recently experienced contradicting instructions between MHF auditors and explosive regulators. During a recent explosives regulator inspection, it was identified that certain aspects of signage were incorrect resulting in a notice being issued for the signage to be changed. However, two years earlier an MHF audit team issued the same notice to change the same signage, The signage is now displayed how it was prior to two years ago. the company complied with the instruction at a cost to the company.

It is [REDACTED] opinion to avoid contradiction between NSW regulatory departments, explosive storage sites should be principally regulated by explosive regulators and not by the MHF department

Technical and administrative amendments needed in the MHF Regulations (Section 4.2)

4.2a) What administrative or technical changes could be made to the current MHF Regulations to improve application and consistency of the MHF laws across jurisdictions?

As previously stated amending the legislation:

It is proposed that NSW WHS regulation be changed in a view to harmonising with other explosive regulator jurisdictions and consider more flexibility in its determination of MHF facilities involving explosive products

Example:

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e) Unless the operator of the place has been given a notice under regulation xxx of the Chief Officer's decision to classify the place as a major hazard facility.

Schedule 15

Due to the increase in use and demand of Ammonium Nitrate Emulsions products in Australia and the existing regulation of the product the proposal is to specifically add Ammonium Nitrate Emulsions UN3375 to the list and increase the threshold qty from 200 (tonne) to 500 (tonnes).

4.2b) What other non-regulatory changes could be made (e.g. additional or improved guidance) to improve application and consistency of the MHF laws across jurisdictions?

As above

Other issues with the model WHS regulations for MHFs? (Section 4.3)

4.3a) How well do you think the current model MHF Regulations meet the intended policy objectives outlined in section 2 of the model WHS Act, particularly with advances in technology and emerging industries?

Click or tap here to enter text.

4.3b) What other issues do you have relating to the model MHF Regulations that were not raised in the [Review of the model WHS laws](#) or otherwise addressed in the previous questions?

Click or tap here to enter text.

- What changes to the model MHF Regulations do you consider would address these issues?

It is proposed that NSW WHS regulation be changed in a view to harmonising with other explosive regulator jurisdictions and consider more flexibility in its determination of MHF facilities involving explosive products

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e) Unless the operator of the place has been given a notice under regulation xxx of the Chief Officer's decision to classify the place as a major hazard facility.

Explosive sites that are not determined as MHF would continue to operate under the current explosive regulations. Therefore, there would be no detrimental impact on safety.

- What new or updated guidance would assist in addressing these issues?

Please see added comments regarding the determination of Explosive sites as MHF's

4.3c) Are there any aspects of jurisdictional MHF laws or international regulatory frameworks for MHFs that you think should be considered for the model MHF Regulations?

Western Australia Dangerous goods (Major Hazard Facility) Regulation

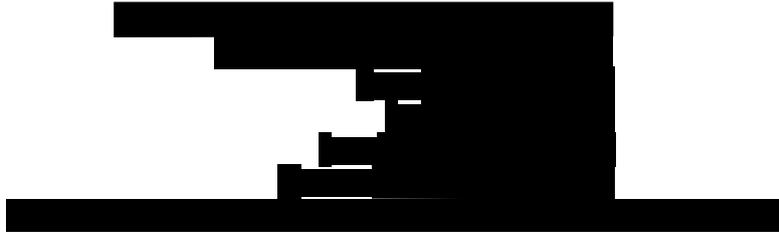
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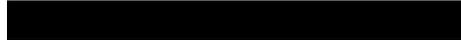
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1 November 2022

SafeWork NSW



**CONSULTATION ON THE MODEL WORK HEALTH AND SAFETY REGULATIONS
RELATING TO MAJOR HAZARD FACILITIES**

1 Introduction



Please see below [redacted] stakeholder response regarding feedback on the current Model Health and Safety Regulations particularly related to Major hazards Facilities.

2 Consistency Regarding MHF Determination

Unlike highly sophisticated chemical processing facilities, explosive storage sites are generally uncomplicated, rudimentary production and storage facilities that have suitable on-site separation in accordance with AS 2187.1, table 3.2.3.2. Moreover, Explosive sites are highly regulated and monitored under state-specific laws i.e. NSW Explosive Regulations 2013.¹

Furthermore, explosive storage/production facilities are often located in remote regions away from populated areas, therefore, offering little or no risk to off-site facilities and local communities, and where not located remotely, are appropriately licenced.

Current regulations generally require explosive sites/facilities to acquire a multitude of licensing ranging from manufacturing, transportation and import/export. Additionally, if the site has been

¹ Explosive Regulation 2013 (NSW)



determined as an MHF for exceeding threshold quantities of the schedule 15 chemicals the facility is required to attain an MHF Licence.²

The costs to businesses associated with licencing are not merely financial but also time taken due to the preparation of the required documentation.

a) For example, the cost associated with an explosive storage/processing site that has been determined as an MHF:

- MHF \$55,386.00 per annum
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Therefore, a company could be charged an additional licence fee of \$276,930 over 5 – years. The site could be assessed as posing no risk to a local community and not being determined as an MHF, and a site that can be safely operated under existing explosive legislation costing \$5644?

b) Double-handling information within management plans

As part of the explosive licence application the applicant must provide a:

- Security Plan³ and
- Safety Management Plan⁴

Generally, the plans can be amalgamated into a comprehensive Explosive Management Plan (ExMP).

The ExMP, which is a thorough document communicates all the necessary factors and Risk Assessments for the safe operation of the facility/site.⁵ Many if not all of the factors in an ExMP are duplicated in the required MHF Safety Case.

c) It is the view of [REDACTED] that in some cases current NSW legislation regarding explosive facilities are over-regulated when encompassed with MHF legislation. This overregulation

² Work Health and Safety Regulation 2017 (NSW) cl 535

³ Explosive Regulation 2013 (NSW) cl 35

⁴ Explosive Regulation 2013 (NSW) cl 36

⁵ Ibid cl 35-36

subjects a company to the unnecessary costs associated with licence fees and the burden of maintaining multiple duplicated documents.

- d) Other Jurisdictions have enacted legislation that precludes the need for explosive storage sites to be MHF licenced and hence avoids the unnecessary need for over-regulation of explosive operators:

i. **QLD WHS Regulations⁶**

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ii. **Western Australia Dangerous goods (Major Hazard Facility) Regulation⁷**

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iii. **██████████ Proposal**

⁶ Work Health and Safety Regulation 2011 (QLD)

⁷ Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007 (WA)



