

3 November 2022

Safe Work Australia
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Email : [REDACTED]

GEA Response: Safework Australia - Consultation on the model Work Health and Safety Regulations relating to Major Hazard Facilities

Dear Safework Australia,

Gas Energy Australia (GEA) appreciates the opportunity to respond to Safework Australia - Consultation on the model Work Health and Safety Regulations relating to Major Hazard Facilities.

GEA is the national peak body representing the downstream gas fuels industry, encompassing Liquefied Petroleum Gas (LPG), Liquefied Natural Gas (LNG), Compressed Natural Gas (CNG) and Hydrogen (H₂). The industry comprises major companies and small to medium businesses in the gaseous fuels supply chain, including refiners, fuel marketers, equipment manufacturers, gas transporters, consultants, and service providers to the industry. Our members operate Major Hazard Facilities (MHF's) across Australian and offer the following feedback in relation to the consultation questions and issued raised:

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

Regulations are not applied uniformly

NSW Workplace Health and Safety regulations Section 530¹ excludes port operational areas under the control of a port authority, a pipeline to which the Gas Supply Act 1996 or the Pipelines Act 1967 applies, or a mine or a petroleum site.

Queensland Work Health and Safety Regulation Section 530² excludes facilities that are a magazine under the Explosives Act 1999, at which no processing activity involving dangerous goods, including explosives, is carried out.

GEA suggests that a model akin to that used by the Heavy Vehicle National Law is adopted and jurisdictional regulation, which is inconsistent, is withdrawn.

Additional requirement in State regulation

NSW Workplace Health and Safety regulations Section 558A Security arrangements. This clause does not appear in the Queensland Regulations of the corresponding number or the model regulations.

¹ <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2017-0404#ch.9>

² <https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2011-0240#ch.9>

GEA suggests that Safework Australia confirm the need for Section 558A and, if required, adopt this clause into the model regulations or, if not required, then NSW delete the requirements from the Workplace Health and Safety regulations.

Interpretation differences in documentation

Section 561 Content deals with the content required when submitting a Safety Case. It includes under part (c) a **summary** of the major hazard facility's emergency plan:

- In NSW this is interpreted on the application form as meaning: "The final emergency plan prepared in accordance with clause 557, which incorporates feedback from the Commissioner of Fire & Rescue NSW, and has been tested in accordance with clause 557(6)."³
- In Queensland this is interpreted as: "A complete emergency response plan should be provided; incorporated into the safety case document or as an attachment".⁴

GEA suggests that a uniform definition be developed and adopted uniformly by all jurisdictions.

Standardisation in capacity

Different parts of the regulations determine thresholds using different terminology for measuring capacity, either volume or weight:

- Section 328 Application of Part 7.1 the table uses volume,
- Schedule 11 Placard and manifest quantities uses volume,
- Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity) uses weight, and
- Conversion factors from litres to cubic metres can vary from state to state.

GEA suggests the regulation standardise its requirements.

Difference in schedule numbers (Victoria)

The Victorian regulations⁵ refer to Schedule 14—Materials and their threshold quantities whereas the model regulations refer to Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity). This is confusing for organisations operating similar facilities in different jurisdictions.

GEA suggests, as a minimum, that Victoria adopt the model regulation schedule numbering system.

Isolated Quantities rule should apply to the same chemical

Schedule 15 *Hazardous chemicals at major hazard facilities (and their threshold quantity)*, Section 4 *Threshold quantity of more than 1 hazardous chemical*, includes a paragraph (d) which allows isolated quantities up to 2% where it cannot act as an initiator of a major incident to be excluded from the threshold calculations.

The guidance in Safework Australia Guide for Major Hazard Facilities Notification and Determination⁶ *Example 19, First Example of Isolated Small Quantities* provides an example of the same chemical (in this case LPG).

³ https://www.safework.nsw.gov.au/_data/assets/pdf_file/0020/50384/SW08109-0318-407151_INT.pdf

⁴ https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0020/92207/form-578-application-major-hazard-facility-licence.pdf

⁵ <https://content.legislation.vic.gov.au/sites/default/files/2021-11/17-22sra012%20authorised.pdf>

⁶ https://www.safeworkaustralia.gov.au/system/files/documents/1702/notification_and_determination.pdf

GEA suggest the current clause relating to “Isolated Quantities” should have the heading changed to align with the example shown in the guidance material and allow the application of the clause to apply to the same chemical.

Site capacity

In determining what is an MHF, Section 532 *Meaning of hazardous chemicals that are present or likely to be present*, explains that hazardous chemicals, including Schedule 15 chemicals, being present or likely to be present at a facility is a reference to the quantity of hazardous chemicals that would, meet the maximum capacity of the facility.

The regulation then goes on to add together individual quantities for components, tanks and pipework which adds to a total that is greater than amount of hazardous chemicals that are present or likely to be present at the MHF. This issue is further compounded where the capacity of cylinders and tanks as per their design and construction is presented as water capacity and not the capacity of the chemical it contains. Resulting in an overstating of the dangerous good at the facility.

Nominally empty cylinders and tanks that can be transported under the Australian Code for the Transport of Dangerous Goods by Road & Rail⁷ are often stored at a MHF site, and these also contribute to the site capacity. A pragmatic approach would be to consider the phase of the dangerous good and allocate nominally empty cylinders and tanks with a capacity reflective of the vapour contents of that vessel.

GEA suggests that the intent of Section 532 is to accurately represent what is present, or likely to be present, as a dangerous chemical and not the water capacity of the facility. This should be made clearer in the various jurisdictional regulations and guidance material available to take into account the “phase” (gas or liquid) of the schedule 15 chemical.

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

Multiple sign offs from different arms of Government

There is a significant issue of duplication for businesses when dealing with different government bodies in the same jurisdiction. NSW is the most segmented, as it requires sign off from the Commissioner of Fire & Rescue NSW, and must demonstrate regard of any written advice received from the Commissioner of NSW Police. The same information has to be provided and reviewed by different departments within the same jurisdiction, usually with a subsequent fee.

Duplication of effort in dealing with the same government but different departments is costly and time consuming.

Need for consistency in templates, application documentation and application forms

Jurisdictions require similar information, but this is not consistent. There are differences in:

- templates for pre-incident plans,
- application documentation, and
- license application forms.

⁷ <https://www.ntc.gov.au/sites/default/files/assets/files/ADG-Code-7.7.pdf>

GEA members who operate the same MHF installation in multiple jurisdictions find that the difference in these makes for additional costs and for no benefit.

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

As outlined in the response to 4.1a) The scope creep and information being asked for is diverging from the “summary” information outlined in the regulations to full plans, evidence and more detailed information.

A safety management system is fast becoming a regulatory bookend and needs to refocus on being a practical safety management plan.

Conclusion

While there has been significant effort and harmonisation, there remain substantial differences in jurisdictional regulation and interpretations at a functional level that exist between regulatory bodies. The consultation asked for evidence and our members have provided examples and suggestions for improvement for your consideration.

The review also asked what administrative or technical changes could be made to the current MHF Regulations to improve application and consistency of the MHF laws across jurisdictions. GEA suggests removing individual state or territory legislation and transitioning to a model akin to that used by the Heavy Vehicle National Law and setting up a National Regulatory body that could oversee MHF legislation. This would stop jurisdictional interpretations and regulatory differences.

The answer is to start with a common regulation and common understanding. Remove the many inconsistencies, and work with industry so that industry and regulators are trained in the interpretation and application of one regulation.

Kind regards,



Mr Brett Heffernan
Chief Executive Officer
Gas Energy Australia

