

LPG Association of NZ (inc) – Comments on the Consultation draft of the Health & Safety at Work (Major Hazard Facilities) Regulations 2015

The LPG Association represents LPG producers, wholesalers, distributors, retailers and appliance and equipment suppliers. The Association welcomes the opportunity to provide comments on the Exposure draft of the above Regulations. Our comments are confined to the issue of increased compliance requirements for lower tier sites.

- Comments relating to changes in basic structure and approach of the Regulations, with respect to facilities falling between the upper and lower threshold quantities, compared to the earlier proposals (which have been the subject of feedback from the Association)
- Comments on the requirements of the Regulations should the proposed approach of having lower-tier Major Hazard Facilities proceed as set out in the consultation (exposure) draft.

Other detailed comments on the drafting and interpretation of the requirements are being made directly by Association member companies.

1. Approach to “Lower-Tier” MHF Facilities

- 1.1 The Association fully supports the intent of the new Regulations to put in place a rigorous regulatory framework for facilities which have the potential to cause a major accident. Our understanding of the intent, gathered from the introduction section (pages 132-134) of the earlier policy proposals for Major Hazard Facilities, is that the MHF Regulations are intended to focus on those facilities with the potential for catastrophic failure causing multiple fatalities. The earlier proposals noted, and recent discussions at the Guidance Group confirmed, that the MHF Regulations do not sit in isolation but are part of a wider Regulatory framework. As such, facilities which are not classified as Major Hazard Facilities will not be without regulation as they will still be subject to the overarching requirements of the new Health & Safety at Work Act as well as the detailed requirements of other legislation such as the HSNO Act and associated Regulations.
- 1.2 The Association believes that focussing the MHF Regulations on the higher risk facilities is the right approach and is consistent with the best practice approach in the Australian regulatory regime.
- 1.3 The Association therefore submits that adoption of the concept of designating all facilities which exceed the lower notification threshold as Major Hazard Facilities, with application of almost all aspects of the Regulations (having an approved Safety Case being the key exception), represents an unnecessary regulatory burden on those sites where the control of hazards is adequately regulated under other legislation.

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1.4 The Association supports the concept that there are some facilities which do not reach the upper threshold quantities but, due to particular circumstances (such as those set out in regulation 10 (1) (b)), should be designated as Major Hazard Facilities.

1.5 The Association points out that the MHF Regulations sit within a broader framework of control provided by the HSNO Regulations and the wider HSE requirements. These together with WorkSafe's ability to designate a facility as a MHF where appropriate, provides appropriate control measures for those sites which sit between the upper and lower thresholds, without needing them to be designated as Major Hazard Facilities.

2. Comments related to the regulatory requirements for lower-tier facilities if that approach remains in the final regulations.

2.1 As noted above, application of almost all aspects of the Regulations to lower-tier facilities represents disproportionality of regulation. As an example, an LPG facility with a 30te bulk tank and capacity for 20te of LPG in cylinders poses a significantly lower risk than those associated with upper-tier facilities yet the proposed regulatory framework is almost identical given that the safety assessment and safety management system requirements form the bulk of the work required for a safety case.

2.2 The disproportionality in the Regulations could initially be addressed by making more parts of the regulations apply solely to upper-tier facilities. For example Regulation 25 (1) should apply to both lower and upper tier facilities, with Regulations 25 (2), (3) & (4) only applying to upper-tier facilities. Guidance notes could be used to provide guidance on the regulators expectations of the nature and extent of the safety assessment required under 25 (1). A similar approach should then be adopted for Regulation 27 with 27(1) being the only part applying to lower-tier facilities.

2.3 Consideration of the requirements of other legislation such as HSNO should also support the exclusion of the proposed requirements for Emergency Plans (Reg 28) and Dangerous Occurrences (Reg 30), for lower-tier facilities.

3. Summary.

3.1 Requiring "lower-tier" sites to comply with the bulk of the MHF Regulations is a significant departure from what was signalled in the May 2014 discussion paper and indeed from the current Australian or UK MHF systems. The lower-tier sites are regulated through the HSNO Regulations, the wider HSE legislation, and resource management and local authority district plan requirements. The Association cannot therefore see the justification of this overlay of extra requirements for lower tier- sites.

3.2 The proposed lower tier requirements would add considerable costs to Industry operations with no increased safety outcomes. The Association therefore believes that either the lower-tier sites should not be designated as MHF's, with the only

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requirement being to notify WorkSafe NZ, or if they remain MHF's remove all but the WorkSafe NZ notification requirements.

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