

LPG Association of NZ (inc) – Comments on Fee and Levy Options for WorkSafe New Zealand’s Oversight of Regulations for Major Hazard Facilities

The LPG Association welcomes the opportunity to provide feedback on the discussion document which sets out fee and levy options for cost recovery of Worksafe’s oversight of the new MHF Regulations.

The Association represents all the LPG Wholesalers and Major Retailers as well as the national distributor.

The Association agreed with the general principle of a major hazard facility regime but is now deeply concerned with the proposed level and method of collection of the proposed fees.

The Association believes that

1. The fee structure as proposed is unfair and overly expensive given the risk profile of LPG storage sites and
2. It does not recognise the effectiveness of the current hazardous substance location certificate regime.

1. Estimation of WorkSafe NZ costs.

1.1. In a drive for administrative simplicity the proposed fee structure adopts average Regulator intervention costs, derived from the UK and Australian regimes, to extrapolate average 5 year costs for New Zealand and then applies these costs evenly across all upper and lower tier sites.

1.2. This approach is unfair because the resultant fee structure does not recognise the risk profile differences between substances and types of facilities. Compiling average intervention costs across all lower tier or upper tier sites means that single substance storage sites, with filling on some sites, such as a typical LPG site, are categorised and pay the same as, multi substance, processing and production sites. This will result in the LPG sites paying a disproportionate amount of the costs of the Regulator.

1.3. The approach of basing regulatory intervention and resultant costs, on the UK and Australian regimes also ignores the fact that New Zealand operates under the existing HSNO regime which requires among other things annual vessel certification and location certification as well as safety management system requirements. The Association believes that the existence of the HSNO regime should result in a lower need for regulatory intervention and proactive auditing compared to the UK and Australia which do not operate a HSNO location certificate regime.

1.4. Also this approach to estimating the level of Regulator effort does not seem to be aligned with the proportionality intent of the Regulations, e.g. Reg 36(3)(a) states that a MAAP should “include measures that are proportionate to..” and Schedule 5 which states “A safety Management System must be (a) proportionate to the major incident hazards and complexity of the organisation of the MHF”.

2. Cost recovery structure.

2.1. There will always be a requirement to strike a balance between the need to minimise potential for cross subsidisation of one class of MHF by others (ie one Operator paying a disproportionate share of the Worksafe costs), with the need to devise a system which is transparent and avoids complexity of application. However the Association believes that the fairest system is option 1, Fees charged for safety cases and designations and if necessary, chargeback of Regulator time on an as required basis. This takes account of the relative size/complexity of sites as well as recognition of the existing HSNO Regime as this should guide the level of proactive interventions, rather than estimating on overseas models.

2.2. We do not agree with para 59 of the consultation document which says the option of fees based on the services each operator receives “*is not feasible, as it is too inefficient. It would involve very detailed fee setting, and complex, costly collection*” . The actual cost recovery model works successfully in the UK and is in widespread use by the providers of services (from legal, to engineering and business consultancy). Setting up such a regime would require slightly more effort at the beginning and would require time-recording systems to be established but it is certainly feasible. We do note that such a model will mean that operators would have less certainty over the level of fees they need to allow for each year in their budget planning processes.

2.3. Unnecessary or disproportionate compliance costs present a commercial challenge to all operators irrespective of the size of the organisation but this is particularly the case for the “smaller” companies who have less headroom to absorb the costs. The Association does not have access to the information which has led to the conclusion in Para 73 of the Consultation document that “*Worksafe has only identified one current facility that could fit a small business label*” but we are aware of a significant number of lower tier LPG sites that are small businesses.

2.4. For these businesses the magnitude of the fees outlined in the consultation could be a considerable and ongoing added burden on top of the current HSNO Regime costs. It is also worth noting that in addition to the fees payable to Worksafe, operators will also have additional costs associated with the internal resource demands for demonstrating compliance with the Regulations and for preparing MAAPs and safety cases. These costs have not yet been quantified but will not be insignificant. Overall the fees to Worksafe and the increased internal costs will pose a degree of challenge to the small LPG businesses.

3. Multi-Site discount.

3.1. Para 60 of the Consultation document seeks feedback on “*whether there could be a future option for multiple-site discounts*”. The Association strongly supports this approach and believes it should be part of the funding regime from the start. Operators who have multiple MHF sites will generally be operating them under a common safety management system and we believe the adequacy of the **system** would only need to be assessed once by Worksafe, rather than multiple times by different inspectors. Only site specific aspects, such as implementation of the safety management system, local consequence assessment and emergency arrangement would then need to be subject to facility specific oversight. This approach would significantly reduce Worksafe’s workload and this reduction should be reflected in the fees charged to the operator. We believe that for this to be effective Worksafe would need to identify a lead inspector for a particular operator, part of whose role would be to ensure the avoidance of duplicated effort and consistency of approach across all the operator’s sites.

4. Conclusion.

4.1. The LPG Industry in New Zealand is relatively small, with even the “larger” LPG companies relatively small compared to the LPG companies operating in the UK and Australia. We believe there is a risk of disproportionate Regulatory costs falling on LPG sites because of the way both the quantum and recovery methods of the estimated MHF Regulator costs have been arrived at.

4.2. We believe the MBIE need to look again at the cost recovery recommendations to ensure fairness and proportionality of the regime, even if answer is a more “complex” cost recovery system.

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