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15 December 2006

Mladen Kovac
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Dear Mladen

The Australian Environment Business Network (AEBN) welcomes the opportunity to comment on *Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2006*.

AEBN is an industry and business representative body specializing in environmental issues, which affect our members. Our membership collectively has a turnover in excess of \$50 billion and employs well over 50,000 employees. Further information about AEBN can be found on our website at www.aebn.com.au.

Members of AEBN's Policy Reference Group who include most of the industry based environmental managers prepared this submission.

Should you require further clarification of the issues and positions identified in this submission please contact me on the number below.

Yours sincerely

Andrew Doig

ANDREW DOIG
Director
AUSTRALIAN ENVIRONMENT BUSINESS NETWORK

AUSTRALIAN ENVIRONMENT BUSINESS NETWORK

Submission on

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2006

December 2006



Sydney & Melbourne

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EXECUTIVE SUMMARY

The Australian Environment Business Network (AEBN) welcomes the opportunity to comment on the *Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2006*.

AEBN considers the full cost recovery of the MHF unit is inequitable as the community and the nation as a whole will share in the benefits of having lower risks from MHF sites. Also the costs of the MHF unit is considered to be lower than estimates based on the Victorian model as NSW can gain from Victoria's learnings on MHF sites.

A flat charging structure is also considered inequitable across MHF sites. AEBN proposes a simple 2 level approach consisting of:

- An initial flat fee set at about half of the average costs
- Estimated additional hours based on an assessment of the MHF site on an annual basis

As an hourly rate will apply to most sites, a cap on the maximum fee levels would also be required to provide confidence that a blank cheque will not be required.

Implementation of the MHF regulation should consider the poor progress on the development of all the guidelines and support documentation. A change in the period of grace for MHF implementation is considered appropriate, and AEBN suggests adding 6 month to the time frame.

Also that flexibility be demonstrated especially for companies with multiple MHF sites. Avoidance of unnecessary rushing of the MHF requirements should result in better outcomes.

Should the contents of this submission require further clarification please contact Andrew Doig at AEBN on (02) 9453 3348.

RECOMMENDATIONS

- R1 AEBN recommends the NSW Government consider the competition implications of Queensland's zero MHF fee structure, in light of the NSW State Plan and at a minimum structure MHF fees to be more equitably shared between the MHF sites and the local and NSW community.
- R2 AEBN recommends that a 2 tier level of fee structure be used comprising of:
- 1) A flat fee component at about half that of the flat fee structure
 - 2) An annually negotiated additional number of hours to undertake MHF assistance and assessment.
 - 3) Setting a maximum fee of less than \$50,000
- R3 AEBN recommends that the implementation dates be reconsidered to reflect the development of draft guidelines for the various plans.

1. INTRODUCTION

AEBN welcomes the opportunity to comment on Clearing the Air Options Paper on *Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2006 (MHF Regulation)*.

AEBN is an industry and business representative body specialising in environmental issues that affect our members. Our membership collectively has a turnover in excess of \$50 billion and employs well over 50,000 people. Further information about AEBN can be found on our web site at www.aebn.com.au.

Major Hazard Facilities (MHF) regulation is recognised by industry as requirement to doing business involving large quantities of dangerous goods. AEBN wishes for the MHF legislation and requirements to be implemented in an efficient and lowest cost manner that achieves a desirable level of protection of employees and the community. Lessons learnt from Victoria and Queensland should make NSW implementation more cost effective in implementation and operation and effectual in outcomes.

The MHF Unit has to also consider the level of resources that MHF sites will need to meet the requirements. At the public meeting AEBN met one MHF site with only 15 employees. Meaning that small MHF sites will be stretched for resources to meet MHF requirements and at the same time remain viable businesses. Such companies are concerned that the MHF requirements may drive them out of NSW if not out of business.

Overall the cost to business of completing the MHF requirements needs to be considered during the MHF requirement implementation process. Flexibility and quality input by the MHF unit will greatly assist MHF sites come up to speed in an efficient and low cost manner. A hard handed or blunt use of the MHF regulatory powers will make NSW less attractive for major projects and lead to lower economic growth for NSW and higher unemployment.

In the past MHF sites have been reviewed and considered under planning legislation, which considered among other issues location of the site and the exposure of neighbours to hazards if a large-scale incident occurred. Separation of neighbours from such incidents and their estimated areas of unacceptable harm has been part of the planning process. However, there are still incidents where MHF sized facilities must spend considerable resources challenging developments where they breach such separation zones. Under MHF laws industry would prefer if such separation areas are mandated and are not permitted to be considered at the planning stage rather than waiting for the matter to go to court, or worse permit unsafe development.

Cost effectiveness and the policy of full cost recovery on MHF sites is an area that AEBN has issues with and are detailed in this submission.

Timing is also an area of concern especially when there are no draft guidelines. It is appreciated that such guidelines cannot be issued before the regulation is proclaimed; there are models to form a basis of what is required. While Safety Management Systems and Safety reports are expected to be similar to the Victorian and Queensland guides the lack of a security and emergency plan guides from the NSW Police and Fire Brigades is a concern.

2 MHF FUNDING

2.1 Full Cost Recovery

AEBN is concerned over the high administrative costs predicted for the implementation of the MHF regulation and the NSW government's position of having full cost recovery. According to the *Funding Regulatory Activities* document approximately \$2 million per annum is to be raised from largely the 35+ MHF sites. This imposes a cost burden, if a flat fee model is used of over \$50,000 per annum per site.

The full cost recovery approach taken by the NSW Government is justified and compared with other jurisdictions in the *Funding Regulatory Activities* document, stating:

Charging the regulated firms is considered to be the most appropriate approach to setting cost recovery charges and is an approach widely utilised by all governments, including the NSW government. Other states, such as Victoria, set fees based on specified activities related to licensing, while South Australia is proposing to introduce some level of cost recovery, which is yet to be determined. Queensland does not charge fees, and the Commonwealth's National Offshore Petroleum Safety Authority (NOPSA) has full cost recovery for MHFs.

AEBN agrees in principle with a user pays approach, the question is who are the beneficiaries from invoking MHF controls on selected sites. South Australia and Victoria have recognised that the benefits of MHF will also flow to the local community and other businesses. A major incident is what we all agree should be prevented, as if it occurs it places the local community and businesses in potential jeopardy. It also undermines the state and Australia as a place where reliable and safe practices occur. This has far reaching consequences which may result in that States industry being less attractive to talented people, as well as affecting property prices and insurance premiums for those in the local area.

As a consequence, there is a good argument that user in the case of MHF sites are not just the site itself, but also the local community and the common good of Australia. Therefore a Victorian approach of partial costs, about 70% are borne by the MHF sites and the remaining 20% rests with general community, being funded from consolidated revenue.

While a partial cost allocation of MHF sites is supported, the issues of competition also need consideration. The NSW Government's State Plan goes a long way in supporting industry, quote:

Being Open for Business is about supporting large and small businesses. It's also about supporting a working environment that is fair and collaborative -...

- *Working with local businesses to keep jobs and investment in NSW and side by side with Invest Australia to promote Sydney and regional NSW as first -rate business destinations*
- *Reducing turnaround times and increasing the certainty of expected timeframes for major development*
- *Supporting the efforts of NSW companies to win against international competition in local and overseas markets assessment approvals.*

As Queensland offers MHF sites no fees and bears the entire cost within internal revenue, AEBN is concerned that MHF sites planning to be located in NSW will be more attracted to Queensland. To

adhere to the NSW State Plan the NSW Government should carefully consider its approach to a full cost recovery on NSW MHF sites alone.

The MHF unit also includes substantial input at the planning level. Such requirements will no doubt slow down and or increase the costs to business of the planning approval process, in stark contrast to the State Plan promise above.

RI AEBN recommends the NSW Government consider the competition implications of Queensland's zero MHF fee structure, in light of the NSW State Plan and at a minimum structure MHF fees to be more equitably shared between the MHF sites and the local and NSW community.

2.2 Charging structure

The flat fee charging structure would normally not be considered to be an issue for industry, except the scale of the proposed fees brings this issue to a level of concern. At over \$50,000 per site per year the fees are considerable enough for companies to require for a higher level of differentiation between sites according to the amount of work required by the MHF team to provide. Even if recommendation 1 is adopted fees of over \$10,000 per annum would be a concern if applied in a flat format.

While a flat fee is the most administrative simple means to charge MHF sites will be considered unfair to those MHF sites which require the least time from the unit. As a consequence industry would prefer a more complex and differentiating charging scheme.

Given this level of fees companies will expect the service provided by the MHF team will not be one of regulation and control, but of assistance and cooperation where both parties work to the same goal of lowering the risk of a major incident.

AEBN appreciates that setting a differential type fee is not simple a model of how it could progress includes:

- 1) The lower limit of confidence for most fees of about 370¹ hours is applied to all sites, although it is noted there are some sites that would be lower than this. This approximately halves the proposed fee.
- 2) An assessment of amount of hours required by the MHF unit is negotiated with the MHF site. If a large amount of work to be undertaken has been achieved either by use of external consultants or lessons learnt from other similar MHF sites owned in other states or even countries, this should reduce the level of assessment required by the MHF unit. MHF sites that have done little or the MHF process is new or substantially different from other sites in complexity then more hours would be required. These additional hours to be reassessed each year.

As an hourly rate is applicable, AEBN also contends that this not be open ended and a maximum fee chargeable should also be set. Such a provision is in line with the Victorian MHF regulation. Given that efficiency gains and that a proportion of the costs should be allocated to consolidated revenue this cap should be set lower than the Victorian cap of \$50,197.

¹ A rounded average of the lower confident limits of Victorian MHF sites taken from the Funding Regulatory Activities document

NSW is adopting MHF regulations following the national Standard at a later time than for Queensland and Victoria. As a result there has been a good build up of expertise on MHF assessment from a regulatory perspective to provide good assessments on the number of hours required. In many cases it could be argued that as Victoria and Queensland have done the background work there may be a lower level of assistance and assessment required for NSW.

The Victorian experience of learning about what MHF management meant as it was being implemented should not be repeated in NSW.

R2 *AEBN recommends that a 2 tier level of fee structure be used comprising of:*

- 1) A flat fee component at about half that of the flat fee structure*
- 2) An annually negotiated additional number of hours to undertake MHF assistance and assessment.*
- 3) Setting a maximum fee of less than \$50,000*

2.3 Efficiency Gains

MHF site registration process and preparation of the required safety systems and plan preparation is now not a new process for Australia. Victoria in particular when through a considerable learn curve and wasted considerable time and effort in developing MHF sites to suitable standards. AEBN considers the lessons learnt from Victoria must be taken up in NSW.

The Plastics and Chemical Industry Association (PAICA) have posted [Guidance Note on Industry Lessons from Developing and Implementing the Safety Case in Victoria](#) on their website. Many comments provided in this document provide sound advice for both industry and the regulator on how to handle MHF sites efficiently. It also provides good advice on the problems which occurred in Victoria when the MHF regulations were first introduced. Quote:

Sadly this process [development of MHF safety case] was made much more difficult and costly because the regulator and many consultants in the state were also learning at the same time as the industry. That needs to be avoided in other states. The challenge is to achieve the same safety benefits with reduced cost, bureaucracy and legal processes.

The document then discussed the areas where the main costs were wasted and identified how to reduce these costs and develop an efficient and well managed safety case for MHF sites.

AEBN is concerned that the costs used to estimate the number of hours and hence the staff numbers in the *Funding Regulatory Activities* document is based on the Victorian estimates which include a large component of the learning experience for WorkSafe Victoria. Estimating staff numbers is always a difficult process, especially before the criteria on which they are based is merely draft. Nevertheless, the new MHF unit will and must base its approach from the learning's from Victoria and Queensland. As a consequence, the number of regulatory hours per site is expected to be lower in NSW. If industry is paying directly for its regulation, it will expect value for money, and will not be satisfied if the charges are made just to reflect costs. The charges must also reflect outcomes and value for money in MHF unit time and output.

3 IMPLEMENTATION TIMEFRAME

Members should raise the timetable for implementing the MHF program.

The pace of the implementation is considered quick, especially for single companies with multiple sites. Such companies are concerned they will have to implement MHF requirements simultaneously across all their MHF sites. This is impractical for such companies and the MHF unit. Companies with multiple MHF sites consider the most efficient process is to start with one site, perhaps the largest and undertake a detailed plan and implementation of that first site. While preliminary work can commence on the other sites, requiring these other sites to progress at the same rate is fraught with inefficiency, lack of resources and high costs. Such an outcome serves no one except those requiring strict adherence to the regulatory requirements. Especially considering PACIA's paper [Guidance Note on Industry Lessons from Developing and Implementing the Safety Case in Victoria](#) there is no point to rushing the MHF requirements. Flexibility is the main requirement that AEBN is requesting here so that a staged approach accurately reflecting corporate resources and consideration of the desired quality and efficiency is the outcome.

AEBN notes that Queensland provided a 7 month period of grace before the regulation commenced. This not only permitted the Queensland Emergency Services (coordinating agency) to prepare the necessary documentations and guidelines it also provided potential MHF sites a lead time to prepare for becoming an MHF site. Queensland's MHF timetable is tabled below in figure 1.

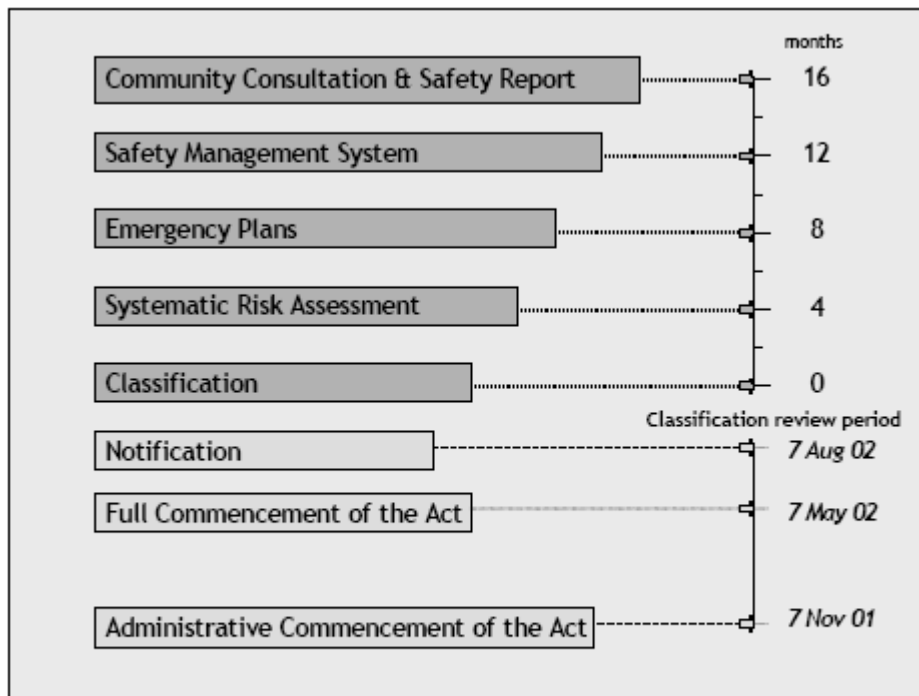


Figure 1. Legislative Timeframes

AEBN acknowledges there is provision within the draft regulation to permit WorkCover to extend the time periods for registration and provision of various reports, but there is concern that guidelines for compliance may not be available. While considerable reference materials, especially from Victoria and Queensland provide guidelines on MHF safety plans, safety management systems and risk

assessments, it is the security and emergency plans that appear to be of most concern. Fire Brigades and the Police component of the MHF unit have considerable work to undertake to provide guidelines on their security and emergency plans.

Policy No.1 of the NSW Fire Brigade: "*Guidelines For Emergency Plans At Facilities Having Notifiable Quantities Of Dangerous Goods*" does not fully meet the requirements for Emergency Planning at Major Hazard Facilities. Dissemination of this document which is focused on emergency plans for facilities with notifiable quantities of dangerous goods may cause significant unnecessary costs if MHF sites use it then the guidelines is substantially changed. Poor guidelines or guidelines which change as a result of government agencies learning on the go will substantially impact on the costs of MHF preparation should be avoided. As a consequence, the implementation of MHF requirements should only commence when quality guideline documentation has been established.

R3 AEBN recommends that the implementation dates be reconsidered to reflect the development of draft guidelines for the various plans.

A change in the period of grace for MHF implementation is considered appropriate, and AEBN suggests adding 6 month to the time frame.

4. CONCLUSION

AEBN considers a more equitable MHF cost recovery process that assists MHF sites to improve safety performance and protects employees and the community will be implemented. This will not only share the costs more equitably, but also take into consideration the competition, especially from Queensland, but also from other states and internationally. To achieve this AEBN considers that the proposed fees per site will be at least 50% lower than those proposed. Overall the number of hours of MHF Unit time per MHF site should be substantially lower than the Victorian experience given the significant learning's and efficiency gains discovered. This will also lead to lower MHF unit staff numbers and lower costs for MHF sites.

To further improve equity between MHF sites, using the 2 level fee structure where:

- the first level sets a minimum hours required of MHF unit time
- the second level is an estimation of the number of extra hours required

Capping the fee level to less than \$50,000 will ensure that costs for the MHF unit do not spin out of control.

A more realistic time frame for implementing MHF regulations will enable improved outcomes and prevent wasteful policy development on the run experiences which occurred in other states implementing MHF requirements. Flexibility and a desire to achieve a well connected and constructed MHF safety case will be the outcome and stretching of industry and MHF unit resources will be avoided