



PETROLEUM INDUSTRY TRANSPORT SAFETY FORUM

SUBMISSION TO MBIE on
Development of Regulations to
support the new Health and Safety at
Work Act

Contact:

Mark Ngatuere

Secretary

Petroleum Industry Transport Safety Forum

P O Box 1778

Wellington

Ph: (04) 471 8285

Fax: (04) 471 2649

E-mail: pitsf@rtfnz.co.nz

NOVEMBER 2014

PETROLEUM INDUSTRY TRANSPORT SAFETY FORUM SUBMISSION TO MBIE ON DEVELOPMENT OF REGULATIONS TO SUPPORT THE NEW HEALTH AND SAFETY AT WORK ACT

1.0 Petroleum Industry Transport Safety Forum

1.1 The Petroleum Industry Transport Safety Forum is a voluntary organisation made up of delegated fuel industry participants assembled under the general auspices of Road Transport Forum NZ.

1.2 The Forum promotes safe, reliable operations. The group's primary purpose is to draw on member's substantial experience and provide representation to, and further the interests of, participants involved in the safe transport, storage and handling of petroleum products.

1.3 The group's members represent, and also provide services to the following:

Allied Petroleum Ltd, BP Oil NZ Ltd, Chevron New Zealand, Z Energy Ltd, Hooker Pacific, Lowes Industries, MFI Engineering, Tanker Engineering, Tanker Solutions, Tranzliquid Logistics Ltd.

2.0 Foreward:

2.1 The PITSF is a comparatively unique entity. Few other HSNO related groups cut across the diverse range of handling, storing and transporting of bulk dangerous substances. Freight transport in particular is a heavily regulated industry. It is the only business conducted on a public thoroughfare. That requires a sophisticated understanding of a variety of land transport rules and regulations. Few other handlers and storers of bulk dangerous substances have similar appreciation or familiarity with that. Nor do they have the support and backing of the major players in New Zealand's bulk dangerous substances market.

- 2.2 The discussion document – Developing Regulations to Support the New Health and Safety at Work Act – (the discussion document) is part of the Government’s Working Safer package of reforms, which aims to reduce New Zealand’s workplace serious injury and death toll by 25 per cent by 2020. The PITSF welcomes the opportunity to assist MBIE achieve that goal.
- 2.3 The PITSF has set itself lofty safety goals. Our goal is to achieve zero workplace injuries. There is no room for any sort of error when handling, transporting or storing large volumes of combustible substances. Even a seemingly minor mistake in any aspect of handling, storing or transporting bulk flammable liquids has considerable potential to cause serious injury or death.
- 2.4 That concern is not limited only to those people directly responsible for, or involved with, handling, storing or transporting bulk flammable liquids. There is a potential large hazard radius that surrounds the workplace. In respect to transport, the hazard radius is mobile. The potential harm to society is therefore considerably higher in comparison to static sites or entities that engage in singular activities such as only handling or storing of bulk dangerous substances.
- 2.5 Lapses in judgment or failure to follow procedure cannot be tolerated by the bulk hazardous liquids transport industry (the industry).
- 2.6 Handling, storage and transport procedures and techniques used in the industry have been developed and finely honed over a long duration of time. The industry has not rested on its laurels and continually finds ways to improve safety. At times industry process and procedure has exceeded regulatory expectation. That does not mean that the regulatory environment has been insufficient in terms of safety and is more a recognition that the industry prides itself on exceeding expectation rather than just hitting the target.

- 2.7 The discussion document offers the opportunity for some of that hard fought knowledge to be utilised.
- 2.8 Rather than follow the format provided in the discussion document we have responded in this format. Doing so provides us the opportunity to respond to the discussion document questions and to provide insights which may be useful. We have elected not to respond to all questions in the discussion document.

Proposal responses

- 3.0 Inventory of hazardous substances
The proposal is that a PCBU at a workplace would be required to ensure that an inventory of all hazardous substances used, handled or stored at the workplace is prepared and kept at the workplace and the inventory is maintained to ensure the information in the inventory is up to date.
- 3.1 The PITSF is comfortable with this proposal as it reflects current industry practice. Codifying that would create greater consistency throughout the industry. That has obvious safety benefit.
- 3.2 **Question 104:** *Do you have any comments in relation to the regulatory proposal requiring a PCBU to prepare and maintain an inventory of hazardous substances?*
- 3.3 **Answer:** *The PITSF supports this suggestion if requirements are to be as defined in the discussion document.*
- 3.4 **Question 105:** *Given that this proposal seeks to codify existing good practice, do you think the proposed regulation, requiring a PCBU to prepare and maintain an inventory of hazardous substances, will impose any additional costs on PCBUs? Conversely, what do you think*

are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

3.5 **Answer:** *industry members are currently required to have a record of quantities in the tankwagon at any time AND current MSDS available so in all likely events the proposals will not impose additional requirements or impose cost on PCBU's*

4.0 Management of risk to health and safety

The proposal is to require a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace in accordance with the requirements that will be prescribed in regulations covering general risk and workplace management.

4.1 In our foreword we have mentioned the extent of the regulatory environment applying to industry handlers, storers and transporters. We did not however elucidate the comprehensiveness of the training regimes put in place to deliver those goals. That attitude has enabled the industry to exceed expectation on a variety of requirements. Health and risk management by PCBU's being one of them.

4.2 **Question 106:** *Do you have any comments in relation to the proposed regulations setting out processes and considerations for managing the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace?*

4.3 **Answer:** *The industry is heavily regulated and has comprehensive training programmes in place to mitigate recognised risks to a high level of compliance.*

4.4 **Question 107:** *Given that employers are currently required to manage significant hazards in accordance with sections 8 – 10 of the HSE Act, do you think that the proposed processes and considerations for managing the risks to health and safety associated with hazardous substances will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).*

4.5 **Answer:** *If implemented as suggested we expect that these changes will impose minimal cost burden.*

5.0 Provisions of the HSNO Classes 6, 8 and 9 Controls regulations
Flammable bulk liquids recently adopted IMDG designations in New Zealand. Diesel fuel is regarded as an ecotoxic substance and is transported under UN classification 3077 or UN classification 3082. Those changes required some practical changes to be made in the industry. Placarding changes were necessary. Handling and storage practices remained the same given that the product had not changed, only its environmental designation.

5.1 The relevance of these comments to this proposal is that until recently the industry had not dealt with products classified as Class 9. Transferring those regulations should have minimal effect on the industry

5.2 **Question 112:** *Do you have any comment to make about the regulatory proposal to transfer regulations 7 – 10 and 29 and 30 of the HSNO Classes 6, 8 and 9 Controls regulations into the new regulations?*

5.3 **Answer:** *See above comments (para's 5.1 & 5.2)*

6.0 Requirements for labelling

The proposal is for new regulations to require the PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled.

6.1 A truck is considered a place of work. We agree that hazards should be correctly identified. Labelling is the simplest way to achieve that. There are other requirements for identifying hazardous goods when being transported but essentially the vehicle labels (placards) are the main identifier of that hazard.

6.2 Missing from our comments in Section 5.0 was the substantial cost implication associated with having to change labelling and placarding for UN classification 3077 and UN classification 3082. That does not mean we do not agree that the placarding required changing. We are merely attempting to highlight the cost of compliance.

6.3 At times transporters in the industry placard to the highest hazard being transported. That might mean that there are minimal amounts of a high risk substance being carried in a consignment and that rather than identify the larger volume of product being carried a carrier will continue to display the higher risk product. An example is a compartment that has unloaded UN classification 1203, been reloaded with (for example) UN classification 3077 and vapour associated with UN classification 1203 remains in that compartment.

6.4 It is sensible to placard to that higher risk.

6.5 **Question 117:** *Do you have any comment to make about the regulatory proposal to require a PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled in accordance with the HSNO Identification regulations (8 to 30, 32 and 33) and the HSNO Emergency Management regulations (8 to 10)?*

6.6 **Answer:** *Our response above provides some practical limitations to the substances transported in our industry. Labelling bulk flammable liquids when storing and handling is a straightforward process. As identified, there are some nuances associated with transporting mixed loads and with changing loads in truck/trailer compartments. We believe that the correct procedure is to label according to the highest risk substance transported. To improve consistency clarification is needed from MBIE on this.*

6.7 **Question 118:** *Do you think there are any other immediate improvements that should be made to workplace labelling requirements?*

6.8 **Answer:** *Yes. It would be beneficial to clarify that labelling for transport units should require the highest risk substance or hazard to be identified.*

7.0 Requirements for safety data sheets

The proposal is for new regulations that would require a PCBU to obtain the current SDS for a hazardous substance from the manufacturer, importer or supplier of the hazardous substance.

7.1 **Question 119:** *Do you have any comments in relation to the proposed regulations requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance?*

7.2 **Answer:** *We agree with this proposal. The proposal reflects industry standard practice.*

7.3 **Question 120:** *Do you think the proposed regulations, requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal?*

(Please quantify any impacts identified and express in dollar terms to the extent practical).

7.4 **Answer:** *If implemented as suggested we expect minimal cost implication.*

8.0 Requirements for signage

The proposal is that regulations 51 and 52 of the HSNO Identification regulations and regulation 42 of the HSNO Emergency Management regulations would be transferred into the new regulations and merged into a single signage obligation (and one set of threshold quantities).

8.1 MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

8.2 **Question 121:** *Do you have any comment to make about the regulatory proposal to transfer the existing signage requirements set out in the HSNO Identification regulations (51 and 52), and Emergency Management regulations (42) into the new regulations and merge into a single obligation?*

8.3 **Answer:** *Current industry signage requirements already provide adequate coverage. We do not oppose this proposal.*

8.4 **Question 122:** *Do you think there are any immediate improvements that should be made to the signage requirements that are being transferred into the new regulations before the review is carried out?*

8.5 **Answer:** *None at this stage. The current regime seems suitably robust.*

9.0 Requirements applying to tank wagons and transportable containers

The proposal is to transfer the requirements of the HSNO Tank Wagons and Transportable Containers regulations into the new regulations. MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

9.1 The proposed review period would be welcomed by our sector. The PITSF provided significant contribution to the latest round of amendments to the regulations. That contribution utilised industry knowledge to create a regime that is more reflective of best practice. Those changes may have required some tankwagon or transportable container builders and users to modify the way that they conduct their business. We have no qualm with that as doing so improved safety.

9.2 One difficulty with the regulatory regime is that regulations are sometimes unable to keep abreast of innovation. Some land transport rules and regulations are linked directly to industry codes and standards. It seems wise to adopt a similar attitude for tankwagon and transportable container regulation's given the continual safety improvements being made in the industry.

9.3 **Question 125:** *Do you have any comment to make about the regulatory proposal to transfer the requirements of the HSNO Tank Wagons and Transportable Containers regulations into the new regulations?*

9.4 **Answer:** *We welcome the transferral of regulations into the new regulations but would prefer to see a mechanism put into place that would enable or assist regulations to keep abreast of safety or technical enhancements/innovations.*

9.5 **Question 126:** *Do you think there are any immediate improvements that should be made to the requirements applying to tank wagons and transportable containers regulations that are being transferred into the new regulations before the review is carried out?*

9.6 **Answer:** *An improvement would be to put in place an industry code or standard to encourage a more adaptive regulatory environment.*

10.0 Emergency Management

MBIE propose that the following provisions of the HSNO Emergency Management regulations, which relate to duties of a person in charge of a workplace, would be transferred into the new regulations:

- regulations 21 – 24 (fire extinguishers);
- regulations 25 – 34 (emergency response plans); and
- regulations 35 – 41 (secondary containment).

10.1 **Question 133:** *Do you have any comment to make about the regulatory proposal to transfer the existing emergency preparedness requirements set out in the HSNO Emergency Management regulations (21 – 41) into the new regulations?*

10.2 **Answer:** *Industry practice is to maintain and update emergency preparedness requirements. An interesting observation is that industry members share building evacuation plans with the Fire Service and practice evacuations annually. There is no similar requirement for Tankwagon response. This comment should not be construed as a proposal to impose similar requirements for transport equipment. We are merely pointing out that the lack of similar safety procedures for vehicles suggests that they are not a concern.*

10.3 **Question 134:** *Do you have any comment to make about the regulatory proposal that an emergency response plan, or any part of an emergency response plan, could be part of any other management*

documentation for an emergency whether — required by the general risk and workplace management regulations made under the proposed new Act; or required by some other Act; or undertaken by a PCBU for some other reason?

10.4 **Answer:** *Agreed. No comment to add*

10.5 **Question 135:** *Do you have any comment to make about the regulatory proposal that an operator who is required to prepare an emergency plan for a major hazard facility in accordance with new regulations covering major hazard facilities would not be also required to prepare an emergency plan by the new regulations covering work involving hazardous substances?*

10.6 **Answer:** *Agreed. No comment to add*

10.7 **Question 136:** *Do you have any comment to make about the regulatory proposal to require a PCBU to revise their emergency response plan, if the Fire Service makes a written recommendation about the content or effectiveness of the plan?*

10.8 **Answer:** *Agreed. No comment to add*

10.9 **Question 137:** *Do you think that we should retain the current prescriptive list of matters to be addressed in an emergency plan (as set out in regulations 29 and 30 of the HSNO Emergency Management regulations) or should we adopt the more flexible list of matters used in Australia (regulation 43 of the Australian model regulations)? Why/why not?*

10.10 **Answer:** *The Australian plan is more generic which correctly imposes responsibility on the PCBU, but their regime has potential for "interpretation" by individuals which may differ over time. It will be*

necessary to address that to maintain consistency within the industry.

10.11 **Question 138:** *Do you think that we should retain the current prescriptive set of requirements in relation to fire extinguishers (as set out in regulations 21 – 24 of the HSNO Emergency Management regulations) or should we adopt the more performance-based requirements used in Australia (regulations 359 and 360 of the Australian model regulations)? Why/why not?*

10.12 **Answer:** *As per our answer to Question 137*

10.13 **Question 139:** *Do you think there are any immediate improvements that should be made to the emergency preparedness requirements that are being transferred into the new regulations before the review is carried out?*

10.14 **Answer:** *None come immediately to mind*

11.0 Test certification

- *Approved Handler qualification*

The PITSF supports the proposal to revoke the approved handler qualification. If the approved handler qualification is revoked there needs to be a mechanism in place to ensure that transporters, handlers and storer's remain adequately trained and proficient at what they are doing.

11.1 The industry has for a number of years sought the removal of the approved handler qualification. The cost of gaining the qualification is significant (approximately \$8000 per candidate taking into consideration lost productivity and hiring of training providers/assessors) and the qualification is set at minimum standard. Transporters, handlers, and storer's are trained to a much

higher level of proficiency than required by the approved handler qualification. In short, the current regime applies significant cost to industry members that are training their personnel at levels exceeding expectation.

11.2 The discussion document highlights the merits of on the job training. On the job training is easily conducted. The pivotal part of the skills verification process is ensuring that the assessment regime is necessarily rigorous and robust.

11.3 Training should be left to the industry. Assessment should be carried out by independent assessors. That does not mean that industry personnel cannot become independent assessors. Making assessors independent of their employers reduces the opportunity for coercion when assessments are being made. The distinction must be that assessors will be required to hold the necessary qualification and recognition from a reputable underwriter. The Motor Industry Training Organisation should be that guarantor.

11.4 Worksafe may also be considering training personnel to assess potential candidates. One slight flaw with that is that potential assessors probably would not have the experience or expertise that industry assessors would have. It takes considerable time, effort and industry participation to reach that level of skill. It is doubtful that non-industry personnel could gain that or stay abreast of it.

11.5 **Question 140:** *Do you have any comment to make about the regulatory proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision?*

11.6 **Answer:** *The PITSF supports this suggestion so long as the necessary safeguards are put in place.*

- 11.7 **Question 141:** *Do you think the proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)*
- 11.8 **Answer:** *We envisage that no additional cost will be borne by PCBU's as there is already a very high level of training, instruction and supervision being exercised in the workplace. The main benefits of this proposal are the removal of unnecessary cost and improvements in safety. As mentioned above there is significant cost involved with the approved handler regime. The move to on the job training and third party assessment will significantly reduce that costs without negatively impacting safety.*