PETROLEUM INDUSTRY TRANSPORT SAFETY FORUM

SUBMISSION TO MBIE on the Health and Safety at Work (HAZARDOUS SUBSTANCES) Regulations 2016

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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 Introduction

2.1 The amalgamation of the wide range of regulations and requirements for hazardous substances and their appropriate amendment should improve safety and compliance.

2.2 Our submission focuses primarily on those sections or requirements applying to the transport of bulk fuels. Particularly Part 16.

2.3 It is worth discussing some of the drafting principles before getting to our comments. The unilateral substitution of "PCBU" for any description of a natural person or business entity conducting any of a number of myriad tasks throughout the draft regulations confuses who is responsible for what.

2.4 There are also examples in the draft regulations where two separate people or entities are related to in the same passage where they appear to morph into one single but different entity. Regulation 16.42(4) states *"The PCBU must ensure that fire extinguishers are installed and located on the road tank wagon in such a way that the PCBU is able to extract…."*. While we understand the intent of this passage the person that ensures a vehicle is adequately fitted with fire extinguishers is probably not going to be the same person that uses them as alluded to by the use of "PCBU" to describe them both.

2.5 Draft regulation 16.31(3) *"A person designing a transportable container….."* is an example of how that ambiguity can be reduced by clearly identifying who is being made responsible. To address that it may be better to actually identify who or what that entity/ person is responsible for throughout the regulations unless it is abundantly clear who the "PCBU" may be or what their role is.

2.6 The lack of reference to certain class 2, 3, and 4 substances being under control of approved handlers in the draft regulations suggests that requirement has been dropped. The commentary accompanying the regulations seeks feedback on the approved handler qualification and training duties under draft regulation 4.3 and invites conversation on what requirements and threshold levels should be retained.

2.7 If the intent is to drop the approved handler qualification for class 2,3 and 4 and introduce an alternative training and auditing regime we welcome that. If that is not the intention we draw MBIE's attention to earlier submissions requesting that qualification be dropped if alternate training and monitoring schemes can be put in place.

2.8 Undoubtedly MBIE will receive an amount of response from members of the training and qualification industry, who for too long, have

profited extremely well from the existing system who probably will not support a change away from the approved handler qualification.

2.9 Their reasoning will be from a purely commercial aspect whereas ours is based on improving safety. Handling, storage and transport procedures and techniques used in the industry have been developed and finely honed over a long period 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. It has certainly exceeded the knowledge within the training and qualification industry.

2.10 These comments do 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.

2.11 The point being that our sector of the industry welcomes the opportunity to improve its performance. Removing the approved handler requirements will encourage that. The NZ Qualifications Authority and a number of regulatory bodies have recognised the advantages of industry training and third party assessment. A fundamental step change has been made to the training regime for transport industry qualification. On the job training accompanied by third party assessment has been demonstrated to work extremely well and is improving performance within other sectors of the road freight transport industry.

2.12 That should provide MBIE with the confidence that industry is well prepared and capable of exceeding their obligations. There is too little space in this submission to discuss how industry will meet the requirements of 4.3 and we welcome the opportunity to discuss and expand on this with MBIE.

2.13 The discussion document contains a variety of infringements and penalties. We accept that in some cases some form of penalty should accompany under-performance. We do think that some of the penalties are out of context and in a number of cases unnecessary.

2.14 Our main issue is that the prospect of having a penalty imposed by the regulator is far outweighed by customer and reputational loss and that these drive compliance. For example the infringements in Part 16 are substantial and added to the loss of a customer for designing, fabricating or operating deficient equipment might be considered manifestly unfair. The infringement regime in a number of cases imposes a double whammy that most players in the industry would not be able to recover from.

2.15 The vehicle manufacturing industry in New Zealand is not that big that it can afford to lose any expertise or production ability. The penalties in a number of examples seem out of context with other parts of legislation. For example 10.2(a) of the Land Transport (Offences and Penalties) regulations stipulates that the consignor of dangerous goods for transport must ensure that dangerous goods are properly packaged. The penalty for failure to do so is $5,000 for an individual and $25,000 for a body corporate. 10.3(f) states a person who loads a vehicle or freight container used to transport dangerous goods must ensure the vehicle is securely loaded. Failure to do so results in a penalty of $3,500 for an individual and $15,000 for a body corporate. The penalties proposed by the draft regulations are of significantly higher magnitude.

2.16 There is no penalty regime in place for design failure in the transport industry. Those are considered on a case by case basis and while it seems simple enough to wrap apparently similar situations up and nominate a penalty value for them the regime proposed is too coarse. This is especially so for Section 16 of the regulations.

2.17 We consider the majority of penalties excessive and unnecessary based on the fact that Land Transport legislation is based on long proven historical case law and judgement and has been justified. The penalties in the draft regulations that relates to vehicle design and operation seem less considered and no justification for their magnitude has been provided or alluded to. We suggest they be reconsidered.

2.18 At points the draft regulations cut across Land Transport dangerous goods legislation and practice. Having two similar regimes will be confusing and given the familiarity that transport operators have with Land Transport legislation and the legacy that the Land Transport (Dangerous Goods) rule and accompanying Standard (NZS 5433 Parts I and II) have provided the road freight industry it is simpler and more effective to give them hierarchy.

3.0 Comment

3.1 Penalties that identify the responsibility of the "PCBU" probably do not broadcast as well as could be where responsibility lies. This is especially so for a tankwagon designer or fabricator who is supplied allegedly compliant equipment from a supplier for fitment or incorporation into a tankwagon. Land Transport legislation (Chain of responsibility S 79T, U) clearly apportions responsibility to those who might by act or omission request or require a truck driver to break certain safety laws. The use of the term "PCBU" is too vague in the draft regulations. We would prefer to see those that may have an effect on a tankwagon's design or operational safety more clearly identified.

3.2 The Draft regulations delegate parameters of containers to road vehicles. The segregation distances provided in 16.10.36[1] do not

[1] *16. 10.36*
(d) ensure that any road vehicle loaded with containers of class 2, 3, or 4 substances is—

account for a number of heavy vehicle combinations whereby separate vehicles may be in combination and connected at closer distances than those specified. For example the inter vehicle spacing between a truck and full trailer is regularly at the minimum distances suggested- especially when turning. The same applies to "B train" units.

3.3 6.20(2) of the draft regulations states *"A compliance certifier must not issue a compliance certificate in relation to any matter in an industry in which the certifier is also a PCBU or worker (otherwise than as a compliance certifier) or for any matter—*

(a) that the certifier is or has been responsible for; or

(b) that the certifier has a financial interest in; or

(c) in relation to which the certifier has provided advice or any other assistance in connection with the design, planning, or construction of anything relating to the matter."

3.4 Under the current compliance regime tank wagon manufacturers are able to issue compliance certificates in some situations. Our understanding is this will no longer be acceptable. If that is the intention our concern is that there is insufficient capability outside of the tankwagon industry to provide sufficient number of certifiers with the necessary independence to meet demand. Although current certificates would remain valid there will be tank wagons requiring inspection shortly after the introduction of the proposed legislation. It is highly unlikely that demand will be met. The current certifying and compliance regime has not been a cause for concern and should not be changed.

(i) not less than 3 m from any other vehicle that is loaded with compatible substances; and
(ii) not less than 5 m from any other vehicle that is loaded with incompatible substances; and
(iii) not less than 3 m from any place where containers of compatible substances not on a vehicle are located; and
(iv) not less than 5 m from any place where containers of incompatible substances not on a vehicle are located; and

3.5 Clause 16.11.10(1)(a) Creates difficulties with maintenance and inspection of heavy vehicles. We reference *HZNO Code of Practice 6 clause 4.2.2* which stipulates a tank is to be drained with taps closed and sealed, with no hot work undertaken; with the additional undertaking that the room is to be well vented to the outside of the building. The proposed clause increases safety risk. It suggests sealing vents as an alternative. This is a dangerous practice that should be avoided for a number of important reasons. The proposed clause will significantly impact the ability to service, inspect and maintain tankwagons. We suggest referencing operational procedures like those in the HZNO CoP.

3.6 We suggest amending clauses 16.2 (3)&(4). They do not match current practice when seeking approval from the responsible government agency. LAB numbers are no longer issued, however they are still used on tankers that were issued them. The approval number for tankwagons is now TAN. It would be simpler to amend these clauses and substitute discrete terms for certification with a term like "Approval Number". Doing so would also cover other tank wagons that may use alternative prefixes.

3.7 Proposed clause 16(5)(1). (a) in this passage repeats the requirement of (h) and is an unnecessary duplication. We suggest removing (a) and retaining (h).

3.8 Draft regulation 16.5(3) details perfectly the comments earlier made on the substitution of PCBU rather than defining actual people. According to this clause it is entirely possible that a tankwagon owner, driver etc be made responsible and penalised for a tankwagon manufacturer or repairer not adequately labelling a tank or sub-frame. Tanks are required to have compliance certificates. We suggest the responsibility to record the certifier's details should lie

with the compliance certifier and that should be integrated with the compliance certificate number issued by that certifier.

3.9 Proposed clauses 16.15(2) (a) & (b) and 16.15(4) relate to specific shut off times (10 seconds, 3 seconds and 5 seconds respectively) for stopping fuel delivery flow. We agree with the intent that pumping equipment should be able to shut off immediately in any emergency situation. The problem we have is that the emergency activation will be made by the person using the equipment. Those times make no allowances if the operator becomes incapacitated in any way or is at one end of the vehicle and must make their way to the other end to shut off flow. It would be better to draft the regulations to ensure that once the operator has operated the shut off flow should stop within those set times. There should be a penalty for poor design in this instance and that needs separating from operational shortcomings.

3.10 In the same vein as Paragraph 3.9; concerns highlighted in proposed regulation 16.17(1) are also operational issues regarding hazardous atmosphere zones. We don't believe it appropriate that a vehicle compliance certificate include aspects that are predominantly reliant on operational aspects rather than issues directly related to the construction of the tank wagon.

3.11 Clause 6.22(5) refers to sub clause (4)(d). 4(d) does not exist and we assume the drafting meant to reference 6.22(4)(c).

3.12 Draft clauses 16.32 and 16.33(b). Draft regulation 16.32 states a design certificate must be given to Worksafe as soon as practicable. 16.33(b) makes no requirement on Worksafe to issue a certificate for each design as soon as possible. The problem we have with 16.33(b) is that a design certificate could be provided and the vehicle might languish until Worksafe have issued the certificate. That has potential

to significantly aggrieve the vehicle's owner/operator and should be avoided. There should also be a time limit indicated for Worksafe to process certificates. Two days should be adequate.

3.13 Draft regulation 16.36(3) refers to the tank wagon complying with regulations 16.10, 16.15, 16.22 and 16.23. Regulation 16.10 refers to compliance with regulations 16.7 to 16.9. Regulation 16.7(1)(b)(i) includes a stress test requiring the tank to be inverted or rotated 90 degrees and leak no more than 0.3 L per day. It is our understanding the stress test was not intended to be required during the in service inspection and this also appears to be the case based on Schedule 23. The final regulations should be amended to remove this inconsistency and ambiguity.

3.14 Clause 16.36(4) references compliance to Schedule 23. For large tankers Schedule 23 refers to compliance with regulations 16.14, 16.15 and 16.17. 16.14(2) regards the motive power or propulsion of the tank wagon, which has no relevance to a non-powered tank wagon, and the certifier will not be aware of the propulsion unit towing that tank wagon at any given time, therefore it does not seem reasonable that they certify compliance.

Conclusion

MBIE's approach to the Hazardous Substances regulations is commendable given the magnitude of the task.

The regulations spell a new chapter in the hazardous goods industry and that is a good thing.

We expect the regulations will improve safety performance and adoption of our suggestions will enhance that.

We welcome the opportunity to discuss our submission further if necessary.