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PEPANZ Submission: Developing Regulations to support the new Health and Safety at Work Act

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of the consultation document *Developing Regulations to support the new Health and Safety at Work Act* ("discussion document"), which was released by the Ministry of Business, Innovation and Employment (MBIE) for comment on 22 May 2014.

PEPANZ represents private sector companies holding petroleum prospecting, exploration and mining permits, service companies and individuals working in the industry.

In this submission we provide responses to some of the questions in the discussion document. We would welcome further engagement on the regulations as they are developed and as outlined below consider it is vital government circulates exposure drafts of the regulations to key stakeholders for comment.

Question 1: Do you have any comment to offer on the proposed approach to phasing the development of regulations?

The proposed phasing appears broadly sensible given the amount of work to be done and the overarching time limit. It is however important that to ensure the regulations are workable, supporting documentation to be prepared by WorkSafe is available in conjunction with the regulations.

While the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013* don't require major changes it is important they are modified sufficiently to align with both the new Act, once it is finalised, and any requirements under other regulations made under the Act. We have begun discussing this with MBIE and welcome further engagement on this topic.

It is very important that before any new regulations are brought into effect, exposure drafts are circulated for comment, either publicly, or at minimum to affected parties and stakeholders. We have found with other regulatory development process that the circulation and discussion of exposure drafts has led to the identification of issues that it is vital are resolved before new regulations are brought into effect.

Question 3: What do you think are the relative benefits and drawbacks of either: having a single set of Health and Safety at Work regulations containing all regulatory requirements in one place; or having multiple sets of regulations each focusing on a single topic (some of which will apply to everyone, and others which will only apply to a select group of duty holders)?

We consider multiple sets of regulations are likely to be preferable. Some of the issues covered are sufficiently discrete, for example asbestos or major hazard facilities, to support a focussed set of regulations on that topic. Giving these topics their own regulations makes it clear for those businesses subject to them

whilst avoiding confusion for the businesses that aren't. We recognise that for those topics that apply to all, or at least most businesses, having one set of regulations may be preferable.

Multiple sets of regulations makes it more straightforward to review parts of the regime (e.g. hazardous substances or major hazard facilities) and makes changes to only the relevant regulatory provisions. This also avoids the untidiness and confusion that can result from amending parts of regulations.

All regulations should begin with the title "Health and Safety at Work (.....) Regulations" so that they will all appear together in a search of the NZ Legislation website.

Question 20: Do you think it is necessary to continue the current provisions enabling a worker to genuinely and voluntarily choose to provide their own personal protective clothing so long as this does not compromise their safety? Do you agree to broaden this out to include all PPE? Please give reasons.

It is vital that the correct PPE is used by workers. To ensure this is always achieved it seems appropriate to continue the current provisions enabling a worker to genuinely and voluntarily choose to provide their own personal protective clothing so long as this does not compromise their safety.

Question 39: Do you have any comments on the proposed procedure for determining or varying work groups where there is one PCBU?

Question 40: Do you have any comments on the proposed process for determining work groups where there are multiple PCBUs?

The proposed process for determining work groups where appear generally logical. We note however that the description and language used in the discussion document appears related to a static situation with a stable workforce.

In contrast some worksites in the petroleum sector as in other sectors can be highly dynamic (i.e. workers coming and going on a daily basis) and the whole site can be brief in duration (i.e. an exploration well drilling site might only exist for a few months). In these situations, who "the workers" are, and the relevant PCBUs could be ever changing. The requirements need to recognise these potentially dynamic elements. For example, how are workers who may only be a on a site for a very brief period accounted for in terms of a work group?

Some scenarios that need to be provided for in relation to workgroups include the following:

- Where contractors are engaged for short term work it appears they would be included in a workgroup. Where a workgroup has already been agreed to and formed, the addition of additional workers should not automatically initiate a re-negotiation of the workgroup establishment. This needs to be provided for explicitly so as to avoid potentially continual renegotiation of the workgroups in situations where the workforce is dynamic.
- Where there is not an established workgroup because the affected workers have not asked for one, a contractor commencing work for that PCBU should not be able to initiate the establishment of a workgroup without the support of the other workers who would make up that workgroup. It would seem illogical for a contractor to be engaged for a week's work, for example, and in that time set in motion the process for a workgroup without wide worker support.
- Where a major plant overhaul is scheduled with a duration of say 2-3 months. As an established site will probably already have workgroup(s) operating and an additional workgroup may not be

justified. Consideration should be given to whether the regulations should include limitations on the establishment of additional workgroups at existing sites.

Question 43: Do you have any comments on the regulatory proposal about the term of office of three years?

It will be important for the regulations outlining the term of office for health and safety representatives to apply practically to time-limited and temporary workplaces such as construction sites. It seems logical that a health and safety representative should be considered to no longer be a health and safety representative once the workgroup has been disbanded or substantially altered.

Question 110: Do you have any comment to make about the regulatory proposal to transfer the requirements of Schedules 4, 5 and 6 of the HSNO Fireworks, Safety Ammunition, and Other Explosives Transfer regulations into the new regulations?

Question 111: Do you think there are any immediate improvements that should be made to the controls on fireworks, safety ammunition, and other explosives that are being transferred into the new regulations before the review is carried out?

An issue that has been identified is that the *Hazardous Substances Classes 1-5 Controls Regulations 2001* don't adequately deal with sleeping shot holes, which are holes dug for onshore seismic surveys where very small quantities of explosives are left at depth for a period of time before being detonated. The regulations provide rules for the treatment of classified explosives and the general rule is that explosives must be under the personal control of an approved handler (Regulation 13). Once explosives have been deployed for detonation (they are in a "designated use zone") there is also the option to have them in a compliant container.

The issue is that the common practice with seismic surveying is to bury small amounts of explosives at the bottom of deep holes (generally 10-50m), leave a fuse going to surface and then detonate them later. The fuse is protected by an electric or coded electronic detonator. The current rules, which it is proposed in the discussion document are continued for the immediate future, are not designed for, and don't provide for the practicalities and risk profile of this activity. What is required are rules that effectively and reasonably control what actually happens during seismic activities and require appropriately safe practices drawing on domestic experience and international practice.

We consider this regulatory issue need to be resolved swiftly rather than left for at least two years for review.

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?

We support the concept 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 or other regulations made under the proposed new Act; or required by some other Act; or undertaken by a PCBU for some other reason. It is important that, as well as meeting the various regulatory requirements that might apply, emergency plans are usable for the organisations and

workers that develop and rely on them. Allowing a single emergency response plan tailored to that workplace to meet various emergency response requirements may be a way of achieving these multiple objectives.

It seems logical that the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013* should also be expressly acknowledged here to make clear an emergency response plan that is designed to comply with regulation 79 of those regulations can also cover the emergency management requirements currently provided for in the *Hazardous Substances (Emergency Management) Regulations 2001*.

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