

Review of Victoria's Electricity and Gas Network Safety Framework:

Supplementary Issues Paper

WorkSafe Victoria submission

Introduction

1. This submission is intended to be read in conjunction with WorkSafe's submission on the Review of Victoria's Electricity Network Safety Framework Issues Paper¹. That submission includes an outline of general OHS duties that apply to all employers and persons with management or control of a workplace in Victoria.
2. The previous submission set out a number of duties under the Occupational Health and Safety Regulations 2007. These Regulations will be replaced by the Occupational Health and Safety Regulations 2017 (OHS Regulations) on 18 June 2017.

General occupational health and safety (OHS) duties apply to the gas industry in Victoria

3. The previous submission noted that certain obligations under Part 5.1- Construction of the OHS Regulations apply to construction work on or near electrical assets. That Part will also apply to construction work on or near gas assets. For example, construction work 'on or near pressurised gas distribution mains or piping' is high risk construction work and must be undertaken in accordance with a safe work method statement². Other duties under the OHS Regulations for the management of specific risks may also apply, depending on the nature of the work undertaken.

Major Hazard Facilities (MHFs)

4. As noted in the supplementary issues paper, facilities that store large quantities of natural gas in Victoria are MHFs and therefore subject to the specific obligations under Part 5.2 of the OHS Regulations³. However, Part 5.2 does not apply to a pipeline in respect of which a licence has been issued under the Pipelines Act 2005, or a distribution pipeline within the meaning of the Gas Industry Act 2001⁴.

¹

https://engage.vic.gov.au/application/files/4614/9446/9242/Electricity_safety_review__WorkSafe_submission.pdf

² r.322 OHS Regulations.

³ See r.5 definitions of 'major hazard facility' and 'Schedule 14 material', and Schedule 14, OHS Regulations.

⁴ r.356 OHS Regulations

5. The previous WorkSafe submission describes the regulatory framework for MHFs (pp.10, 14). The substantive duties for operators of MHFs are largely unchanged in the new OHS Regulations. However, in addition to various minor and technical changes, from 18 June 2018 MHF operators will have new requirements to:
 - a. provide relevant municipal councils with a copy of the parts of the MHF's emergency plan relevant to the off-site consequences of a major incident.
 - b. consider the protection of emergency services personnel when preparing an emergency plan. This express requirement is intended to ensure that the potential impact of a major incident on first responders is planned for as part of the preparation and implementation of the MHF's emergency plan.
 - c. provide seismic data in the safety case where it is relevant to the risk of a major incident at a MHF, and
 - d. provide a summary of any notifiable incidents (i.e. incidents that require notification to WorkSafe under Part 5 of the OHS Act) that have occurred at the MHF in the last five years, in addition to major incidents. This is intended to ensure that operators address hazards and risks highlighted by previous incidents, including those that may not fall within the definition of a 'major incident'.
6. As noted in the previous submission, a MHF operator must hold a licence or (as an interim measure) the MHF must be registered with WorkSafe. Section 40 of the OHS Act imposes penalties for persons who conduct an undertaking at an unlicensed or unregistered workplace where the regulations require the workplace to be licensed or registered. This duty carries a maximum penalty of 500 penalty units for a natural person and 2500 penalty units for a body corporate.
7. A range of other requirements under Part 5.2 of the OHS Regulations that apply to MHF operators are 'Act compliance provisions' for sections 21, 23 and 26 of the OHS Act, which prescribe the general duties of employers and persons who manage or control workplaces. Penalties for non-compliance with those sections are a maximum of 1800 penalty units for a natural person and 9000 penalty units for a body corporate. Act compliance provisions for operators of MHFs include (among other things) duties to:
 - a. identify all major incidents that could occur at the MHF and all major incident hazards
 - b. conduct a comprehensive and systemic safety assessment
 - c. control, so far as is reasonably practicable, the risk of a major incident occurring
 - d. establish and implement a safety management system
 - e. prepare an emergency plan, provide copies to the emergency services and relevant municipal councils, and implement the plan when required by the regulations
 - f. review and if necessary revise major incident hazards, safety assessments, risk control measures, the safety case and the emergency plan
 - g. develop a safety role for employees
 - h. coordinate safety cases with other MHFs if required by WorkSafe
 - i. provision of specific information, instruction and training for employees, and specific information and instruction for non-employees

- j. provision of specific information to the local community about the safety of the MHF, and
 - k. consultation with relevant municipal councils in relation to all matters that could affect the health and safety of members of the local community in the event of a major incident occurring.
8. The OHS Regulations set out detailed requirements for these duties, including content for safety cases and safety management systems.
 9. WorkSafe cannot 'determine' a safety case in the manner that ESV may under the Gas Safety Act 1997. WorkSafe may require amendments to a safety case outline for a registered MHF if it is of the opinion that the outline submitted by the MHF will not lead to a safety case that meets the OHS Regulation requirements.
 10. The operator of a MHF that stores natural gas must also control (so far as is reasonably practicable) the risk of damage to property in the event of a major incident, as natural gas is both a Schedule 14 material and dangerous goods⁵.

OHS Regulations and Gas Safety Act safety case interaction

11. A MHF may also be subject to safety case requirements under the Gas Safety Act 1997, which must be approved by Energy Safe Victoria (ESV). As outlined in the previous submission, the MOU between ESV and WorkSafe governs interactions for MHF and safety cases that are of interest to both parties. In practice, the degree and method of consultation will depend on the particular matters.

OHS regulation of pipelines

12. The supplementary issues paper notes that 'gas used by the Victorian gas system is defined as dangerous goods in accordance with the Dangerous Goods Act 1985⁶ (DG Act). While methane and natural gas are dangerous goods, the DG Act does not apply to (among other things):
 - the conveyance of dangerous goods through a pipeline to which the Pipelines Act 2005 applies or through a gathering line within the meaning of the Petroleum Act 1998,
 - the transmission, distribution or supply of gas to which the Gas Industry Act 2001 applies, or
 - the conveyance of gas by pipeline to which the Gas Safety Act 1997 applies⁷.

⁵ r. 381, OHS Regulations

⁶ Supplementary issues paper, p.14.

⁷ Section 9, DG Act

13. Specific requirements for pressure equipment under the OHS Regulations (eg Part 3.5- Plant and Part 3.6- High Risk Work) do not extend to pressure piping regulated by:

- the Gas Safety Act 1997
- the Petroleum Act 1998; or
- the Offshore Petroleum and Greenhouse Gas Storage Act 2010;
- the Water Industry Act 1994;
- the Pipelines Act 2005; or
- any other Act (other than the OHS Act 2004) that imposes statutory controls over pressure piping comparable to those listed above⁸.

14. While the above exclusions (and the exclusion of certain pipelines to Part 5.2 of the OHS Regulations) mean that some specific duties under the OHS Regulations do not apply to certain gas pipelines, employers and other duty holders continue to have general legal duties under the OHS Act that require them to control risks associated with gas pipelines at a workplace so far as is reasonably practicable (eg the duty that each employer must, so far as is reasonably practicable, provide and maintain for their employees a working environment that is safe and without risks to health).

Safety Culture and Workforce Engagement

15. Paragraph 14 of the previous submission sets out the duty for employers to consult affected employees on health and safety matters. In addition, specific requirements apply to operators of MHFs to (among other things):

- consult employees and their health and safety representatives on specific matters
- develop a safety role for employees,
- provide specific information, instruction and training to employees,
- keep a record of all training provided, and
- ensure that employees have access to safety plans and documentation⁹.

Emerging trends

16. The supplementary issues paper describes the Regional Gas Infrastructure Program, in which compressed natural gas is trucked to regional towns, then stored and depressurised on the outskirts of each town for reticulation into local pipes.

17. The transportation of compressed gas via road is captured by the DG Act, and specific requirements for transportation of dangerous goods apply under the Dangerous Goods (Transport by Road or Rail) Regulations 2008. Those regulations implement the National Transport Commission's model legislative framework for the transport of dangerous goods by road or rail in Victoria, and the Australian Code for the Transport of Dangerous Goods by Road and Rail. Specific requirements also apply to the storage and handling

⁸ see r.5 OHS Regulations for the definitions of 'pressure equipment' and 'pressure piping'.

⁹ Division 5, Part 5.2 OHS Regulations.



of dangerous goods under the Dangerous Goods (Storage and Handling) Regulations 2012.

18. As noted above, the DG Act does not apply to either: the transmission, distribution or supply of gas to which the Gas Industry Act 2001 applies; or the conveyance of gas by pipeline to which the Gas Safety Act 1997 applies. This may include gas distributed or supplied under the Regional Gas Infrastructure Program.