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Commissioner
Chemicals & Plastics Regulation Study
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Commissioner

PRODUCTIVITY COMMISSION DRAFT RESEARCH REPORT

I refer to the Productivity Commission Study into Chemicals and Plastics Regulation and would like to provide input in relation to the commentary in the Report on regulation of Major Hazard Facilities.

In Western Australia, chemicals classified as dangerous goods are regulated under a specific statute by the Resources Safety Division of the Department of Consumer and Employment Protection. This Division also administers occupational safety and health law applicable to "mining operations" and oversees a safety case regime for occupational safety and health in the onshore oil and gas industries.

A very large proportion of dangerous goods imported, manufactured, transported and stored in Western Australia are consumed within the resources sector. Western Australia's extensive resources industries, and the many industry sectors that service that sector, realise considerable benefit from this grouping of statutory safety administration functions.

Legislation specifically covering the manufacture, storage, transport and use of chemicals and other products classified as dangerous goods has been in place in Western Australia for many years. Over the last three years, new regulations have been developed which have been based on international and national standards and codes.

The new *Western Australian Dangerous Goods Safety Act 2004* and supporting regulations were proclaimed on 1 March 2008. The regulations provide for transitional arrangements of up to one year to enable industry and individuals sufficient time to adopt the new requirements.

The new regulations apply the international dangerous goods classification system from the United Nations in accordance with the Australian Dangerous Goods Code 7th edition published by the National Transport Commission in October 2007.

The objective of the reform package is to stimulate higher levels of public and occupational safety and environmental protection involving the handling of dangerous goods. This aim will be achieved through introducing a risk management approach to the many industries involved in the handling of dangerous goods and to replace outdated standards with modern national standards. A risk management approach is already used for most hazards in industry. Less reliance is placed on prescriptive regulations and the risk management approach allows industry to choose the most cost-effective control measures.

The essence of the risk management approach is captured in section 8 of the Act "the duty to minimize risk from dangerous goods" and sections 20 and 62 where the legal status of approved non-mandatory codes of practice is explained and how they serve as guidance to the various means of complying with performance based regulations.

As part of this dangerous goods reform package, the *Dangerous Goods Safety (Major Hazard Facility) Regulations 2007* is one of seven sets of new regulations.

The *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007* (MHF Regulations) apply in addition to the baseline dangerous goods storage and handling regulations, which require a dangerous goods licence to be obtained for the storage or handling of prescribed levels of dangerous goods on the site.

The MHF Regulations will also apply in addition to the explosives regulations for explosives sites which have been classified as MHFs. In this case, the MHF must obtain the appropriate explosives licence under the explosives regulations. Explosives storage sites will not be classified as MHFs in the absence of other dangerous goods.

Those facilities storing or manufacturing quantities of dangerous goods that exceed the scheduled quantity in the regulations and, in the opinion of the Chief Officer, represent a particular risk to the public or environment, may be classified as Major Hazard Facilities (MHF). The regulations reflect the fact that MHFs differ from other dangerous goods sites due to the need for higher levels of safety assessment and control, and continuous assurance and improvement.

The MHF Regulations incorporate the principles of the *National Standard for the Control of Major Hazard Facilities 2002 [NOHSC1014 (2002)]* (National Standard) with some modifications to accommodate local needs and reflect experience gained since the development of the National Standard.

The Chief Officer has the discretion to classify as a MHF any site where greater than the 10% of the threshold quantity (termed "critical quantity" in WA) of Schedule 1 substances will be present if the site is deemed to pose a major incident threat. The Chief Officer also has the discretionary power not to classify a site as a MHF, despite the presence of scheduled goods in excess of the threshold quantity if the site is not deemed to pose a major accident threat.

A number of large sites in WA have been operating under a risk management regime based on the National Standard for many years, so that the reforms introduced by the MHF Regulations 2007 will not be a major change of practice for those sites already operating under a safety case regime.

The reason for the departure from the National Standard in Western Australia is that there are many isolated sites in this State, particularly mines, which routinely store and handle large quantities of dangerous goods under safety management regimes that have proven safe and effective over decades. These sites present little off-site risk and can be effectively regulated under the *Storage and Handling of Non-explosives Regulations 2007*, which are based on a later national standard from the National Occupational Health and Safety Commission and which provides a very strict regulatory regime for the vast majority of dangerous goods sites.

This flexibility in decision making ensures that the decision to classify a site as a MHF is based on the proper assessment of the risk of a major accident rather than solely on the quantity of dangerous goods.

Operators of sites classified as MHFs must demonstrate, in a safety report to be submitted for approval to the Chief Officer, that all practicable measures have been taken to identify all foreseeable major incidents, their likelihood and consequences, and must justify the adequacy of the control measures used to minimise risk.

For MHFs, the safety report is a fundamental requirement for approval to commence operations. MHFs will be licensed, just as any dangerous goods site, but, after classification as a MHF, the licence will carry the condition that the premises are subject to the MHF Regulations and to an approved safety report. For a new site classified as a MHF, delivery of dangerous goods and plant commissioning cannot commence until completion and satisfactory assessment of the safety report.

A fee for the assessment of an application for approval of the safety report is included in the MHF Regulations, and a MHF licence fee is payable under the licensing provisions of the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulation 2007* or the *Dangerous Goods Safety (Explosives Regulations) 2007*.

For the purpose of setting the level of the fee, facilities are divided into four separate classes (A – D) based on the complexity of the operations undertaken at the site. The safety report assessment fee ranges from a maximum of $50,000.00 for a very complex Class A facility to $6,000.00 for a Class D facility.

It should be noted that the fees are not based on the true cost of the assessment service. For major industrial projects, which typically cost in the order of $1Billion and which require a safety report assessment under the MHF Regulation, the fees represent an insignificant part of the overall project development cost.

Western Australia is of the view that the additional layer of protection provided by the MHF regulations is appropriate. The flexibility provisions within the regulations adequately address industry concerns that these additional requirements are unnecessary.

The review of the *National Standard and Code of Practice for the Control of Major Hazard Facilities* is supported by Western Australia in order that experience gained since the standard was declared in 1996 can be incorporated into a revised publication.

Yours sincerely

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