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Energy Safety
Ministry of Economic Development
PO Box 1473
Wellington

By email: Vanessa.Horne@med.govt.nz

SUBMISSION ON THE EXPOSURE DRAFT OF THE GAS (SAFETY AND MEASUREMENT) REGULATIONS 2010

1. Vector Limited ("Vector") welcomes the opportunity to submit on the Exposure Draft of the Gas (Safety and Measurement) Regulations 2010 ("the Draft Regulations") released by the Ministry of Economic Development.
2. We support the Government's objectives of improving the overall clarity of the gas safety regime and strengthening its focus on public safety. Clearer, simpler and more flexible regulations encourage greater compliance and lead to more cost-effective regulatory processes, which benefit industry participants and gas consumers.

Support for the GANZ Submission

3. Vector is making this submission to express full support for the submission made by the Gas Association of New Zealand ("GANZ") on the Draft Regulations, and to highlight the key issues for Vector as an owner and operator of major gas transmission and distribution networks and supplier of LPG.
4. The GANZ submission represents a convergence of industry participants' views on what constitute an effective and workable set of safety requirements for the industry, which also reflect widely-accepted industry practice. We have been highly involved in GANZ processes and have provided substantial inputs, from both technical and practical perspectives, into the development of the GANZ submission.

The Proposed Regulations

Purpose Clause

5. The Draft Regulations would benefit from a purpose clause which is the principal aid in statutory interpretation. Further, the purposive approach to interpreting legislation is now commonly adopted by the courts and tribunals in New Zealand and the purpose clause is the usual starting point for that approach.

Definitional Issues

6. The definitions of terms are dispersed in various parts of the Draft document (e.g. definitions under clause 28), making it confusing for readers to follow. If the review of the safety regulations is meant to provide greater clarity, we propose that the definitions be consolidated and located under a single section to make the document more logical and easier to read. Interpretations/definitions should preferably be placed at the beginning of the regulations (Legislation Advisory Committee Guidelines, page 66); in this case, under Clause 3 – “Interpretation”.
7. Clauses 10 to 15 of the Draft Regulations have introduced provisions relating to “unsafe” situations. These provisions, however, do not identify practical and sensible manifestations of when things are considered unsafe. To remove ambiguity, we propose that these provisions be removed. If the Government wishes to retain these, we propose that officials further work closely with stakeholders to ensure that the correct unsafe situations are specified more precisely.
8. We agree with GANZ that there is considerable ambiguity around the definition of “point of supply” (clause 4), particularly where there are ‘converging’ services, such as in shopping malls. This blurs the lines of accountability and ultimately, liability. We support the GANZ proposal that any alternative point of supply other than the outlet of the Gas Management System should be allowed if agreed to by the distributor, retailer and consumer.

Distribution Systems

9. The Draft Regulations have introduced the requirement for all distribution systems to adopt safety management systems (“SMS”). The intent of this approach is to enable industry participants to create their own risk mitigation solutions in meeting prescribed high level outcomes.
10. Vector supports this flexible approach. SMS encourages the adoption of best practice, ensures that the system is fit for purpose, incentivises innovation in

risk management, and reduces the regulator's cost and the costs for industry participants in providing inputs into government processes.

11. Vector agrees with the GANZ proposal of re-arranging Part 3 which covers gas distribution requirements (see appendix to the GANZ submission). The proposed re-draft removes compliance requirements for things that are not described, and instead identifies what are needed for all distribution systems and how these can be met under an SMS.
12. There is no need to list specific compliance standards as SMS operators should be allowed the flexibility to select standards that best suit their business needs. Highly prescriptive provisions defeat the purpose of having an SMS, and could discourage efforts to ensure that the system is fit for purpose. In this regard, clause 34 should emphasise that NZS 7901 is a means of compliance, and that the distributor has the option to adopt NZS 7901 or another standard that meets the requirements specified in clauses 35 and 36.
13. We support changing the initial lead-in time for the audit of SMS to three years instead of two, to provide sufficient time for this new requirement to be embedded in the regulatory regime.
14. Vector particularly endorses the GANZ recommendations with respect to clauses 38 to 40. We prefer an audit regime that identifies corrective actions, and therefore propose that the powers of the auditor or the Secretary to request the auditor to cancel audit certificates be removed.

Installations

15. The provisions on the safety of installations closely reflect existing industry practice. We only have editorial changes.
16. A key issue that is not addressed in the Draft Regulations is the treatment of what are nominally referred to as "gas installations" - akin to "embedded networks" in electricity (e.g. industrial sites, shopping malls, hospitals and subdivisions). There needs to be some guidance on whether such cases will be treated as distribution systems or installations for the purpose of regulating them. Vector's view is that these should be classified as customer installations. It is the owners or managers of these networks who are best placed to manage the safety of these systems, not the distributors.
17. We propose that the Government discuss the above issue with industry participants, in order to provide clarity around the relationships between distributors, retailers and consumers, and establish clear-cut accountabilities for public safety in these premises.

Implementation

18. In light of the number of key issues that remain to be resolved, Vector is concerned with the haste by the Government in getting the Draft Regulations finalised, following the submission process. We note the Government's wish to have the Regulations approved in May 2010. We believe this is too short a period of time to address substantive matters, including those raised by submissions, in a meaningful and effective manner.
19. The success of the proposed safety regulations largely relies on its implementation. The timing and implementation, particularly of the new safety requirements, therefore need to be carefully considered, and realistic timeframes set.
20. The proposed safety regulations also need to be considered within the wider context of the Government's review of the gas industry's performance, consequent amendments to the Gas Act 1992, and the development of any new Government Policy Statement for Gas Governance ("GPS"). Vector anticipates seeing a more streamlined GPS that is focused on efficiency and security of supply. We urge the Government to continue to engage with stakeholders to ensure the alignment of all these processes.
21. In addition, the recent reforms in the electricity sector have imposed a heavy regulatory burden on electricity companies, many of which also operate in the gas sector. In implementing new regulations, the Government should take into account commercial realities and the absorptive capacity of industry participants to take on additional compliance costs, given the current economic climate. It should also take into account the pace of change associated with some of the proposed regulations, including the implementation of SMS.

Closing comment

22. The development of the Draft Regulations is a step towards further ensuring public safety and providing greater clarity to gas industry participants and consumers. However, as indicated particularly in the GANZ submission, there are key issues that remain to be addressed. We urge the Government to further engage with stakeholders in addressing these issues before the Draft Regulations are finalised.
23. Vector would like to continue working with the Government and industry, including actively participating in GANZ discussions, in order to achieve a more effective safety regime for New Zealand's gas sector.

24. Thank you for considering this submission. If you have any queries, or require further information, please feel free to contact me at John.Rampton@vector.co.nz or 04 462 803 9036.

Kind regards

A handwritten signature in blue ink that reads "John Rampton". The signature is written in a cursive style with a large initial 'J' and a trailing flourish.

John Rampton

Manager Industry Governance and Policy