

# Occupational Health and Safety Act, 1993

## Major Hazard Installation Regulations

The Minister of Labour has, after consultation with the Advisory Council for Occupational Health and Safety, under section 43 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), made the regulations in the Schedule.

### 1. Definitions

In these regulations any expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates -

#### **"emergency plan"**

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means a plan in writing which, on the basis of identified potential incidents at the installation, together with their consequences, describes how such incidents and their consequences should be dealt with on site and off site;

#### **"local government"**

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means a local government as defined in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

#### **"material safety data sheet"**

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means a material safety data sheet as contemplated in regulation 7 of the General Administrative Regulations;

#### **"near miss"**

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means any unforeseen event involving one or more hazardous substances which, but for mitigating effects, actions or systems, could have escalated to a major incident;

#### **"on site emergency plan"**

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means the emergency plan contemplated in regulation 6;

#### **"risk assessment"**

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means the process contemplated in regulation 5;

#### **"rolling stock"**

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means any locomotive, coach, railway carriage, truck, wagon or similar contrivance used for the purpose of transporting persons, goods or any other thing, and which can run on a railway;

#### **"temporary installation"**

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means an installation that can travel independently between planned points of departure and arrival for the purpose of transporting any substance, and which is only deemed to be an installation at the points of departure and arrival, respectively;

#### **"the Act"**

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means the Occupational Health and Safety Act; 1993 (Act No. 85 of 1993);

#### **"transit"**

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includes any time or place in which rolling stock may be between planned points of departure and arrival.

## **2. Scope of application**

- 1) Subject to the provisions of subregulation (3) these regulations shall apply to employers, self employed persons and users, who have on their premises, either permanently or temporarily, a major hazard installation or a quantity of a substance which may pose a risk that could affect the health and safety of employees and the public.
- 2) These regulations shall apply to local governments, with specific reference to regulation 9.
- 3) These regulations shall not apply to nuclear installations registered in terms of the Nuclear Energy Act, (1993) (Act No. 131 of 1993).

## **3. Notification of Installation**

- 1) Every employer, self employed person and user shall notify the chief inspector, provincial director and relevant local government in writing of -
  - a) the erection of any installation that will be a major hazard installation, prior to commencement of erection thereof, and
  - b) the conversion of any existing installation into a major hazard installation, prior to such conversion.
- 2) Every employer, self employed person and user shall notify the chief inspector, the local government and the provincial director within 60 days of the promulgation of these regulations of an existing major hazard installation.
- 3) No employer, self employed person and user shall modify an installation by increasing its storage or production capacity, or altering the process or by effecting any other change that may increase the risk of an existing major hazard d installation, without notifying the chief inspector, relevant local government and provincial director in writing.
- 4) The information submitted by an employer, self employed person and user in terms of subregulations (1), (2) and (3), shall include -
  - a) the physical address of the installation;
  - b) the complete material safety data sheets of all substances that resulted in the installation being classified as a major hazard installation;
  - c) the envisaged maximum quantity of such substance that may be on the premises at any one time;
  - d) the risk assessment of the major hazard installation as contemplated in regulation 5(1);
  - e) any further information that may be deemed necessary by an inspector in the interests of the health and safety of the public.
- 5) Subregulations (1), (2) and (3) shall not apply to rolling stock in transit.
- 6) An employer, self employed person and user shall advertise the notifications contemplated in subregulations (1), (2) and (3) in at least one newspaper serving the communities in the vicinity of the installation which is to be declared a major hazard installation, a proposed major hazard installation or an existing installation which is to be modified, and by way of notices posted within those communities.
- 7) Any interested or affected person may make representations in writing to the relevant local government or provincial director within 60 days about an existing major hazard installation or after the erection, conversion, modification of a major hazard installation, if that installation is not acceptable to that person.

## **4. Temporary Installations**

- 1) Any employer, self employed person and user who has a temporary installation on his or her premises which would, taking into consideration the risks attached to the quantity of substance and the procedure of discharge, result in that temporary installation being declared a major hazard installation if it were not a temporary installation, shall be deemed to be responsible for the storage and discharge of that installation while on his or her premises.
- 2) An employer, self employed person and user contemplated in subregulation (1) shall ensure that a risk assessment for the storage and discharge procedure be carried out for a temporary installation prior to the risk coming into existence.
- 3) An employer, self employed person and user contemplated in subregulation (1) shall, after taking into consideration the risk assessment, take the reasonably practicable steps that may be necessary to reduce the risks attached to the storage and discharge of a temporary installation.

## **5. Risk assessment**

- 1) An employer, self employed person and user shall, after consultation with the relevant health and safety representative or relevant health and safety committee, carry out a risk assessment at intervals not exceeding five years and submit such risk assessment to the chief inspector, relevant local government and provincial director.
- 2) The risk assessment is the process of collecting, organising, analyzing, interpreting, communicating and implementing information in order to identify the probable frequency, magnitude and nature of any major incident which could occur at a major hazard installation, and the measures required to remove, reduce or control the potential causes of such an incident.
- 3) An employer, self employed person and user shall inform the relevant health and safety representative or relevant health and safety committee in writing of the arrangements made for the assessment contemplated in subregulation (1), give them 60 days within which to comment thereon and ensure that the results of the assessment are made available to the relevant representative or committee who may comment thereon.
- 4) An employer, self employed person and user shall make available on the premises a copy of the latest risk assessment for inspection by an inspector.
- 5) An employer, self employed person and user shall ensure that the risk assessment contemplated in subregulation (1), shall -
  - a) be carried out by an Approved Inspection Authority which is competent to express an opinion as to the risks associated with the major hazard installation; and
  - b) at least include -
    - i) a general process description of the major hazard installation;
    - ii) a description of the major incidents associated with that type of installation and the consequences of such incidents, which shall include potential incidents;
    - iii) an estimation of the probability of a major incident;
    - iv) a copy of the site emergency plan;
    - v) an estimation of the total result in the case of an explosion or fire;
    - vi) in the case of toxic release, an estimation of concentration effects of such release;
    - vii) the potential effect of an incident on a major hazard installation or part thereof on an adjacent major hazard installation or part thereof;

- viii) the potential effect of a major incident on any other installation, members of the public and residential areas;
  - ix) meteorological tendencies;
  - x) the suitability of existing emergency procedures for the risks identified;
  - xi) any requirements laid down in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989); and
  - xii) any organisational measures that may be required.
- 6)
- a) An employer, self employed person and user shall ensure that the risk assessment required in terms of subregulation (1) is reviewed forthwith if -
    - i) there is reason to suspect that the preceding assessment is no longer valid;
    - ii) there has been a change in the process involving a substance resulting in the installation being classified a major hazard installation or in the methods, equipment or procedures in the use, handling or processing of that substance; or
    - iii) after an incident that has brought the emergency plan into operation or after any near miss.
  - b) Where the risk assessment has been updated an employer, self employed person and user shall submit a copy of the updated risk assessment to the chief inspector, the relevant local government and the provincial director within 60 days.
- 7) Subregulation (5)(b) shall not apply in the case of rolling stock in transit: Provided that the operator of a railway shall ensure -
- a) that a risk assessment applicable to rolling stock in transit is carried out and made available for inspection at the request of an inspector or local government or both that local government and inspector, as the case may be; and
  - b) that in the interests of the health and safety of the public the necessary precautions are taken.
- 8) An employer, self employed person and user shall ensure that the risk assessments contemplated in subregulations (1) and (5)(a) be made available for scrutiny by any interested person or any person that may be affected by the activities of a major hazard installation, at a time and place and in a manner agreed upon between the parties.

## **6. On-site Emergency Plan**

- 1) An employer, self employed person and user shall after submission of the information contemplated in regulation 3(4) -
- a) establish an on-site emergency plan to be followed inside the premises of the installation or part of the installation classified as a major hazard installation in consultation with the relevant health and safety representative or the relevant health and safety committee;
  - b) discuss the emergency plan with the relevant local government, taking into consideration any comment on the risk related to the health and safety of the public;
  - c) review the on-site emergency plan and, where necessary, update the plan, in consultation with the relevant local government, at least once every three years;

- d) sign a copy of the on site emergency plan in the presence of two witnesses, who shall attest the signature;
  - e) ensure that the on site emergency plan is readily available at all times for implementation and use;
  - f) ensure that all employees are conversant with the on site emergency plan; and
  - g) cause the on site emergency plan to be tested in practice at least once a year and keep a record of such test.
- 2) Any employer, self employed person and user owning or in control of a pipeline that could pose a threat to the general public shall inform the relevant local government and shall be jointly responsible with the relevant government for the establishment and implementation of an on site emergency plan.
- 3) Subregulation (1) shall not apply to rolling stock in transit: Provided that the operator of a railway shall -
- a) establish an emergency plan for each route traversed within 12 months of the coming into operation of these regulations;
  - b) draw up the plan contemplated in paragraph (a) in consultation with the local government through whose jurisdiction that rolling stock is being transported;
  - c) sign a copy of the on site emergency plan in the presence of two witnesses, who shall attest the signature;
  - d) ensure that the plan is readily available at all times for implementation and use; and
  - e) cause that plan to be tested when reasonably practicable and keep a record of such test.

## **7. Reporting of risk and emergency occurrences**

- 1) Every employer, self employed person and user of a major hazard installation and owner or user of a pipeline shall -
- a) subject to the provisions of regulation 6 of the General Administrative Regulations, within 48 hours by means of telephone, facsimile or similar means of communication inform the chief inspector, the provincial director and relevant local government of the occurrence of a major incident or an incident that brought the emergency plan into operation or any near miss;
  - b) submit a report in writing to the chief inspector, provincial director and local government within seven days; and
  - c) investigate and record all near misses in a register kept on the premises, which shall at all times be available for inspection by an inspector and the local government.
- 2) Every employer, self employed person and user shall in the case of a major incident or an incident contemplated in subregulation (1) that was or may have been caused by a substance, inform the supplier of that substance of the incident.
- 3) An employer, self employed person and user shall –
- a) record all near misses in a register kept on the premises, which shall at all times be available for inspection by an inspector; and
  - b) ensure that the contents of the register contemplated in paragraph (a) shall also be available in the event of an inspection contemplated in regulation 5(4).

## **8. General Duties of Suppliers**

- 1) Every person that supplies a substance to a major hazard installation that has been classified as a major hazard installation for the reason of the presence of that substance in that installation shall ensure that he or she supplies with the substance a material safety data sheet contemplated in regulation 7 of the General Administrative Regulations.
- 2) On receipt of the information contemplated in regulation 7(2), every supplier of the relevant substance shall assess the circumstances and substance involved in an incident or potential incident and inform all persons being supplied with that substance, of the potential dangers surrounding it.
- 3) Every supplier of a hazardous substance to a major hazard installation shall provide a service that shall be readily available on a 24 hour basis to all employers, self employed persons and users, the relevant local government and any other body concerned, to provide information and advice in the case of a major incident with regard to the substance supplied.

## **9. General duties of local government**

- 1) Without derogating from the provisions of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), no local government shall permit the erection of a new major hazard installation at a separation distance less than that which poses a risk to -
  - a) airports;
  - b) neighbouring independent major hazard installations;
  - c) housing and other centres of population; or
  - d) any other similar facility:

Provided that the local government shall permit new property development only where there is a separation distance which will not pose a risk in terms of the risk assessment: Provided further that the local government shall prevent any development adjacent to an installation that will result in that installation being declared a major hazard installation.

- 2) Where a local government does not have facilities available to control a major incident or to comply with the requirements of this regulation, that local government shall make prior arrangements with a neighbouring local government, relevant provincial government or the employer, self employed person and user for assistance.
- 3) All off site emergency plans to be followed outside the premises of the installation or part of the installation classified as a major hazard installation shall be the responsibility of the local government.

## **10. Closure**

An employer, self employed person and user shall notify the chief inspector, relevant provincial director and local government in writing, 21 days prior to the installation ceasing to be a major hazard installation.

## **11. Offences and penalties**

Any person who contravenes or fails to comply with any provision of regulations 3(1), 3(2), 3(3), 3(4), 3(6), 4(2), 4(3), 5, 6, 7, 8 or 9 shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period of 12 months and, in the case of a continuous offence, to an additional fine of R200 or additional imprisonment

for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days.